

# EXHIBIT 7

Page 1

1 STATE OF ILLINOIS )  
2 COUNTY OF COOK )  
3 IN THE CIRCUIT COURT OF COOK COUNTY  
4 COUNTY DEPARTMENT - LAW DIVISION  
5  
6 MICHAEL J. MADDEN and )  
7 JEAN MADDEN, )  
8 Plaintiffs, )  
9 F.H. PASCHEN, S.N. )  
10 NIELSON, INC., JACOBS )  
11 FACILITIES, INC., CLIFFS )  
12 AND CABLES, LLC, AND )  
13 VOA & ASSOCIATES, )  
14 INC., )  
15 Defendants. )  
16  
17  
18  
19  
20  
21  
22  
23  
24

The Discovery Deposition of ALBERT  
MIGON taken before SHERRY L. JONES, a Certified  
Shorthand Reporter pursuant to the provisions of  
the Illinois Code of Civil Procedure and the  
applicable rules of the Supreme Court to the  
taking of discovery deposition at 222 North  
LaSalle Street, Suite 430, Chicago, Illinois, at  
the hour of 10:00 p.m., on the 7th day of  
February of A.D., 2006.

PAVESICH & ASSOCIATES  
(312) 214-1992

FBFK 1671  
PRIVILEGED-SUBJECT  
TO PROTECTIVE ORDER

## TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

## **DISPUTE**

		Page 2	
1	Present:		
2	HARMAN FEDICK & O'CONNOR LTD		
3	BY: MR. KEVIN W. O'CONNOR		
4	222 North LaSalle Street, Suite 430		
5	Chicago, Illinois 60601		
6	Appeared on behalf of the Plaintiffs;		
7	BRENNER, FORD, MONROE & SCOTT, LTD.		
8	BY: MR. KENNETH M. BATTLE		
9	33 North Dearborn Street, Suite 300		
10	Chicago, Illinois 60602		
11	Appeared on behalf of F.H. Paschen and S.N.		
12	Nielsen, Inc.;		
13	HINSHAW & CULBERTSON LLP		
14	BY: MR. RICHARD VELAZQUEZ		
15	222 North LaSalle Street, Suite 300		
16	Chicago, Illinois 60601		
17	Appeared on behalf of Jacobs Facilities, Inc.;		
18	FRATERRIGO, BERANEK, FEIEREISEL & KASBOHM		
19	BY: MS. NADERH H. ELRABADI		
20	55 West Monroe Street, Suite 3400		
21	Chicago, Illinois 60603		
22	Appeared on behalf of VOA & Associates;		
23	MECKLER BULGER & TILSON, LLP		
24	BY: MR. ANDREW M. HUTCHINSON		
25	123 North Wacker Drive, Suite 1800		
26	Chicago, Illinois 60601		
27	Appeared on behalf of Schuler & Shook;		
28	NYHAN, PFISTER, BAMBRICK, KINZIE & LOWRY, P.C.		
29	BY: MR. DEAN BARAKAT		
30	20 North Clark Street, Suite 1000		
31	Chicago, Illinois 60602		
32	Appeared on behalf of School District 230.		
33			
34			
			Page 3
1	I N D E X		
2	EXAMINATION OF ALBERT MIGON	PAGE	
3			
4	BY MR. O'CONNOR	6	
5	BY MR. BATTLE	107	
6	BY MR. VELAZQUEZ	110	
7	BY MR. HUTCHINSON	135	
8	BY MR. O'CONNOR	143	
9	BY MR. BATTLE	150	
10	BY MR. VELAZQUEZ	151	
11	BY MR. BARAKAT	153	
12	BY MS. ELRABADI	160	
13	BY MR. BARAKAT	166	
14	EXHIBITS MARKED		
15	MIGON EXHIBIT NOS. 1 AND 2	4	
16	MIGON EXHIBIT NO. 3	107	
17			
18			
19			
20			
21			
22			
23			
24			
			Page 4
1	(Whereupon, Migon Exhibit		
2	Nos. 1 and 2 were marked		
3	for identification.)		
4	(The witness was duly sworn.)		
5	MR. O'CONNOR: Please state your name		
6	for the record.		
7	THE WITNESS: Albert Migon.		
8	MR. O'CONNOR: Let the record reflect		
9	that this is the discovery deposition of Albert		
10	Migon taken pursuant to notice, taken pursuant		
11	to Illinois Supreme Court rules, and all local		
12	applicable rules of the Circuit Court of Cook		
13	County.		
14	Mr. Migon, you've given your		
15	deposition at least once before, correct?		
16	THE WITNESS: Yes.		
17	MR. O'CONNOR: And that was in the		
18	Regalado case?		
19	THE WITNESS: Yes.		
20	MR. O'CONNOR: Have you given it any		
21	other time?		
22	THE WITNESS: No.		
23	MR. O'CONNOR: Because my understanding		
24	is you gave that deposition relatively recently		
1	in the last month or two, correct?		
2	THE WITNESS: No, I think it was later		
3	than that.		
4	MR. O'CONNOR: Okay.		
5	You still remember the ground rules		
6	about answering out loud and things of that		
7	nature?		
8	THE WITNESS: Yeah, more or less.		
9	MR. O'CONNOR: I won't go over all of		
10	those. The only thing I'll remind you is if I		
11	ask you a question and if you don't understand		
12	the question, please ask me to repeat it or		
13	rephrase it. Is that agreeable?		
14	THE WITNESS: Okay.		
15	MR. O'CONNOR: If I ask you a question		
16	and you answer my question, I'm going to assume		
17	that you understood my question and that your		
18	answer was in response to the question I just		
19	gave. Is that fair?		
20	THE WITNESS: Okay.		
21	MR. VELAZQUEZ: Then also answer only if		
22	you know.		
23	THE WITNESS: Okay.		
24	MR. O'CONNOR: I don't know if that		

2 (Pages 2 to 5)

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<p>1 means anything to you. What he is saying is if  2 you're going to guess at something, please don't  3 guess. If you are going to give a best  4 approximation because we're talking about dates  5 and times, which is very difficult coming later,  6 you can certainly give your best approximation  7 on things. Is that fair?</p> <p>8 THE WITNESS: Yes.</p> <p>9 ALBERT MIGON,  10 called as a witness herein, having  11 been first duly sworn, was examined and  12 testified as follows:</p> <p>13 E X A M I N A T I O N</p> <p>14 BY MR. O'CONNOR:</p> <p>15 Q You still work for VOA, sir?</p> <p>16 A Yes.</p> <p>17 Q And what is your title?</p> <p>18 A Project architect.</p> <p>19 Q Are you licensed in Illinois?</p> <p>20 A No, I'm not.</p> <p>21 Q How long have you been a project  22 architect for VOA?</p> <p>23 A Probably about four years.</p> <p>24 Q Approximately four years?</p>	Page 6			Page 8
<p>1 A Approximately.</p> <p>2 Q Have you taken any part of the licensure  3 exam to become an architect?</p> <p>4 A Not yet.</p> <p>5 Q Have you applied?</p> <p>6 A I have.</p> <p>7 Q Before working for VOA who did you work  8 for?</p> <p>9 A A company called Special Projects  10 Group.</p> <p>11 Q Was that in an architectural field?</p> <p>12 A No, it was just like more renovation.</p> <p>13 Q Do you have any background or training  14 in a construction related field?</p> <p>15 A I work with my father just on  16 residential.</p> <p>17 Q What was your father's trade or  18 specialty?</p> <p>19 A Just carpentry.</p> <p>20 Q Don't say just carpentry.</p> <p>21 Was he a union carpenter?</p> <p>22 A No, he wasn't.</p> <p>23 Q Was it something that he just did over  24 the years and became knowledgeable and was</p>	Page 7			Page 9

3 (Pages 6 to 9)

<p>1 Q Did you ever have an instance where you 2 fell from any particular height? 3 A No. 4 Q Has your dad, do you know? 5 A No. 6 Q Was it just you and your dad or did he 7 have other people working for him? 8 A He did have a couple other people 9 working for him. 10 Q Did he have an actual company name or 11 was he a sole proprietor? 12 A Migan Construction is what it was 13 called, sole proprietor, I guess. 14 Q He operated under that particular 15 name? 16 A Correct. 17 Q Did you ever work over a platformed area 18 where you would have potential for falling? 19 A Not that I recall. We did mostly inside 20 work. You know, I mean on occasion if we had to 21 do an addition where somebody wanted a dormer or 22 something like that, then obviously we got on a 23 ladder to do the roof beams and things like 24 that, but that was about it.</p>	<p>Page 10</p> <p>1 like kitchen remodeling. They did, you know, 2 bathrooms. 3 Q Residential work? 4 A More residential but some highrise 5 residential. 6 Q It was highrise, low-rise, single family 7 homes? 8 A Yes. I mean, it was residential work. 9 Q You left Special Projects Group in 10 approximately 2002 then? 11 A No, in '97 it was. 12 Q After '97 who did you go to work for? 13 A VOA. 14 Q You had said you were a project 15 architect for VOA for the next four years? 16 A Yeah. I mean, I started working there 17 in '97. You're not a project architect right 18 off the back. You're more or less a draftsman, 19 and then you just kind of work your way up. 20 Q They call it an intern? 21 A Right. Well, technically you're just a 22 draftsman. An intern is someone more that they 23 hire from school. They do like a part-time 24 internship, you know, work for a few months and</p>
<p>1 Q During your work with your father you 2 learned of the words or the terms OSHA, 3 correct? 4 A No. 5 Q You never heard of it? 6 A No, I didn't. 7 Q What's your educational background? 8 A I went to the Illinois Institute of 9 Technology and got a bachelor's of architecture 10 there. 11 Q And what year? 12 A I graduated in '94. 13 Q And what years were you there? 14 A From '89 to '94. It was a five year 15 program. 16 Q Did you go on for any additional 17 training after that? 18 A No. 19 Q Right after you finished school, who did 20 you go to work for, Special Projects Group? 21 A Correct. 22 Q What kind of projects were you working 23 on for Special Projects Group? 24 A There was a variety of them. They did</p>	<p>Page 11</p> <p>1 then they go back to school. So, no, I wasn't 2 an intern. I was hired as a draftsman. 3 Q In '97 when you were hired as a 4 draftsman, what type of work did you do? 5 A Basically drafting on the computer. 6 Q Any particular types of projects? 7 A I had started there in residential 8 renovation. 9 Q My understanding is VOA does a lot of 10 health care related work? 11 A There is a variety of studious. We do 12 education. We do some health care. We do 13 residential, a variety of -- 14 Q So when you started out, you were in 15 that residential section? 16 A Correct. 17 Q That's kind of where your background 18 was? 19 A Yes. 20 Q How many years did you stay in that 21 residential section? 22 A Well, it was -- the project lasted for 23 approximately a year and then, you know, the way 24 they work is, you know, if there is another</p>

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<p style="text-align: right;">Page 14</p> <p>1 project that comes on-line depending on who is    2 doing what and who is slowing down, they shift    3 people to that project.    4 Q In '98 what project did you get shifted    5 to?    6 A It was the Department of Natural    7 Resources office building project.    8 Q Was this a large building?    9 A Yes.    10 Q How many stories?    11 A It was just a four story building.    12 Q And what was your aspect of that    13 project?    14 A Basically it was just the drafting of it    15 at that time.    16 Q Were you drafting the entire building,    17 the interior buildout? What were you doing?    18 A No, it was more some of the details and    19 stairs, some wall sections.    20 Q Did somebody else at the company do the    21 actual structural aspects of it?    22 A We had a consultant that -- I mean,    23 typically we hire a consultant for the    24 structure, so yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Dennis O'Malley?    2 A He left the company.    3 Q In February of '02 before you started,    4 what was explained to you your role was going to    5 be at that project?    6 A Well, basically they kind of explained    7 that we had three schools that were currently    8 under construction, and basically it was just    9 going to be the project management portion of    10 it.    11 Q By project management portion of it,    12 you're walking the sites, conversing with the    13 construction managers, and making sure things    14 are getting done appropriately?    15 A Well, what we did was -- I mean, I had    16 change orders to review. I had pay applications    17 for contractors to review. We would have    18 project meetings on-site that I would have to    19 attend. You know, then also walking through the    20 building, you know, just checking to see the    21 progress of the construction and, you know,    22 making sure that -- more or less the field    23 observation.    24 Q When you started in February of '02 did</p>
<p style="text-align: right;">Page 15</p> <p>1 Q How long did that project last?    2 A Probably -- I was on it until early 2002    3 basically.    4 Q That was the sole project other than    5 maybe for a day you might have been called in to    6 do some little things; is that correct?    7 A Yes, that's correct.    8 Q Did you work on any school projects    9 before this one at Stagg High School or that    10 group of schools for District 230?    11 A No, I didn't.    12 Q Once you were done with this Department    13 of National Resources building, did you then get    14 moved over to the Stagg High School building?    15 A Yes.    16 Q When you came on board what -- do you    17 remember what month it was?    18 A I think it was approximately February of    19 '02.    20 Q Did you know who you were replacing?    21 A Yes.    22 Q Who were you replacing?    23 A Dennis O'Malley.    24 Q Did you know why you were replacing</p>	<p style="text-align: right;">Page 17</p> <p>1 you have project meetings for the Stagg School    2 specifically?    3 A We did have them, yes.    4 Q Were they on a weekly basis when you    5 started?    6 A I thought they were on a weekly basis.    7 Q At some point did it change from a    8 weekly basis to become less frequent?    9 A Well, yeah. When the construction was    10 finishing up, the schools kind of ended at    11 different periods, and Stagg I believe was the    12 first one more or less to get finished. So I    13 think the meetings -- we no longer had weekly    14 meetings. They may have been monthly or every    15 couple of weeks, but I don't recall.    16 Q You were working with Ms. Fitzgerald on    17 that Stagg School?    18 A Yes.    19 Q She described that in May of 2002 that    20 she went off of this project. Do you recall    21 that?    22 A Yes.    23 Q At the point she left the project were    24 you the primary one then overseeing what was</p>

5 (Pages 14 to 17)

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<p>1 still remaining at that project?</p> <p>2 A Yes.</p> <p>3 Q In May of '02 after she left, were you</p> <p>4 there on a daily basis? Did you come biweekly,</p> <p>5 couple times a week? Did it depend on what was</p> <p>6 going on?</p> <p>7 A I believe it was just more the weekly</p> <p>8 basis.</p> <p>9 Q Did you have a particular day that you</p> <p>10 would come by that particular project?</p> <p>11 A I don't recall.</p> <p>12 Q Would you spend a full day there? Would</p> <p>13 you spend a half a day? What would you --</p> <p>14 A Well, depending on, you know, if the</p> <p>15 construction was almost done, there would be no</p> <p>16 reason to be there for a full day. Typically if</p> <p>17 it was just a meeting, then I was just there for</p> <p>18 the meeting.</p> <p>19 Q Were you still walking the site after</p> <p>20 she left at Stagg?</p> <p>21 A I don't recall exactly when she left</p> <p>22 but, you know, if there was something that the</p> <p>23 owner wanted us to look at then, yes, then I</p> <p>24 would.</p>	<p>Page 18</p> <p>1 Q So you are saying at the time that the</p> <p>2 students began coming back in you would have no</p> <p>3 longer been on this project or you are saying</p> <p>4 that you just wouldn't be walking it?</p> <p>5 A I wouldn't be at Stagg. There was still</p> <p>6 Sandburg that was under construction and hadn't</p> <p>7 been completed yet, so I would have been at</p> <p>8 Sandburg.</p> <p>9 Q When was the final payout for Stagg?</p> <p>10 Wasn't it in 2003?</p> <p>11 A I don't know.</p> <p>12 Q Would you have been involved in the</p> <p>13 final payout?</p> <p>14 A No, we weren't.</p> <p>15 Q Don't you have to sign off as the</p> <p>16 architect saying that even the punch list items</p> <p>17 are correct in such that you can give a sign off</p> <p>18 to let the people get their final payment?</p> <p>19 A After a certain date the owner, you</p> <p>20 know, didn't employ us anymore. Our contract</p> <p>21 basically ran out. So we -- I know that we had</p> <p>22 nothing to do with the final payout of Stagg or</p> <p>23 actually any of the other schools.</p> <p>24 Q When did your contract run out?</p>	
<p>1 Q Let me put it this way.</p> <p>2 School ended in May of 2002,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And then you have the summer portion?</p> <p>6 A Right.</p> <p>7 Q In the summer of 2002 did you on</p> <p>8 occasion still walk through this site at Stagg</p> <p>9 School?</p> <p>10 A I don't remember. I mean, it would have</p> <p>11 been dependent on where the construction was,</p> <p>12 you know. If there was still construction that</p> <p>13 needed to be done and we hadn't done any punch</p> <p>14 lists then, yes, I would.</p> <p>15 Q How about in the fall of 2002 when the</p> <p>16 new school year started? Do you recall walking</p> <p>17 through at that point?</p> <p>18 A No, I don't.</p> <p>19 Q You don't recall one way or the other?</p> <p>20 A No, I don't recall that I was walking</p> <p>21 through there. I thought that the construction</p> <p>22 was more or less done in there.</p> <p>23 Q Not in there. You are saying in there.</p> <p>24 A In Stagg.</p>	<p>Page 19</p> <p>1 A I think it was at the end of '02.</p> <p>2 Q December of '02?</p> <p>3 A December of '02.</p> <p>4 Q And at that point you recall that the</p> <p>5 final payouts hadn't been done at that point?</p> <p>6 A Yeah, I don't believe they have been.</p> <p>7 Q When you came on this job, did you</p> <p>8 review the contract that VOA had?</p> <p>9 A No, I didn't.</p> <p>10 Q So you had seen similar contracts I take</p> <p>11 it?</p> <p>12 A Well, typically the architects have a</p> <p>13 contract called the -- I believe it's a B201</p> <p>14 with the owner. So I had seen a previous one.</p> <p>15 The project was already under construction. I</p> <p>16 didn't bother looking at it.</p> <p>17 Q Is it basically a form contract that you</p> <p>18 guys use?</p> <p>19 A More or less, yes.</p> <p>20 Q Then you make some modifications or</p> <p>21 additions depending on the project that you are</p> <p>22 on?</p> <p>23 A Yes, sometimes they do that.</p> <p>24 Q I'll show you what I've marked as Migon</p>	<p>Page 21</p>

<p style="text-align: right;">Page 22</p> <p>1 Group Exhibit 1, which has been tendered to me  2 as the contract for this particular project from  3 your attorneys. If you can just take a look at  4 it and tell me if that's that the standard  5 contract that you are referring to?</p> <p>6 MR. BATTLE: Standard contract or the  7 particular contract?</p> <p>8 MR. O'CONNOR: Not the particular, the  9 standard contract.</p> <p>10 THE WITNESS: I can't be sure.</p> <p>11 BY MR. O'CONNOR:</p> <p>12 Q Does it look similar to other ones that  13 you have seen?</p> <p>14 A It does, but typically I have seen the  15 ones that has the AIA documentation on the top,  16 and this one doesn't.</p> <p>17 Q Let me ask you first of all a few  18 questions in general.</p> <p>19 You have been involved in projects  20 at least even since that time where you were  21 involved in the design phase of projects?</p> <p>22 A Yes.</p> <p>23 Q In the design -- in that -- in the  24 design phase of the project do you agree that</p>	<p style="text-align: right;">Page 24</p> <p>1 payment to the contractor is due? Is that the  2 typical situation?</p> <p>3 A Yes.</p> <p>4 Q And you explained in this situation  5 though your contract ran out before final  6 payment was due?</p> <p>7 A Yes.</p> <p>8 Q If the original contract provided that  9 the architect wasn't to be paid until the final  10 payment was due, would there have to be some  11 modification to the contract to end your  12 services early?</p> <p>13 A I'm not sure about that. I don't know  14 exactly if the contract had been specified for a  15 certain amount of days. There was a  16 construction schedule that had been done and  17 typically the contract -- for construction  18 administration and field observation it's  19 typically based on the construction line. So  20 any time construction goes over the schedule,  21 typically we would ask the owner for additional  22 compensation, you know, due to the extended  23 schedule.</p> <p>24 Q And they may or may not want to have you</p>
<p style="text-align: right;">Page 23</p> <p>1 the architect is to review with the owner  2 alternative approaches to design and  3 construction of the project?</p> <p>4 A Where is this at?</p> <p>5 Q I'm just -- I will ask you -- I'm  6 reading from something. I'll just ask you the  7 general statement because I don't want to point  8 to something that you're not familiar with.</p> <p>9 A Can you repeat the question, please?</p> <p>10 Q Sure.</p> <p>11 In the design phase of a project  12 would you agree that the architect, such as VOA,  13 shall review with the owner alternative  14 approaches to design and construction of the  15 project? Is that one of the roles that VOA  16 plays?</p> <p>17 A Yes, I believe so.</p> <p>18 Q The architect also provides a  19 preliminary evaluation of the owner's program or  20 what they are submitting that they want to do?</p> <p>21 A Typically, yes.</p> <p>22 Q The architect typically is the  23 representative of and shall advise and consult  24 with the owner during construction until final</p>	<p style="text-align: right;">Page 25</p> <p>1 there?</p> <p>2 A That's correct.</p> <p>3 Q Do you recall typically there being a  4 paragraph that says nothing contained in this  5 document shall relieve the architect from  6 responsibility or liability to the owner for any  7 failure of the architect to perform in  8 accordance with the terms of this agreement or  9 by standards of professional care? Is that --</p> <p>10 MR. BATTLE: Are you asking him if  11 that's in the original contract or is that in  12 the form contract?</p> <p>13 BY MR. O'CONNOR:</p> <p>14 Q Is that a typical statement?</p> <p>15 A I'm not sure.</p> <p>16 Q What is -- if you had read in the  17 contract that an architect has to perform in  18 accordance with the standards of professional  19 care, you've heard that term before, correct?</p> <p>20 A I've heard it asked at the last  21 deposition.</p> <p>22 Q All right.</p> <p>23 And did you inquire of people back  24 at the office of what does conforming to the</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 standards of professional care mean after you  2 heard it?  3 A No, I didn't.  4 Q You as an architect, what does it mean  5 when -- if I would ask you what's the standard  6 of professional care of an architect, what would  7 you respond?  8 A I'm not sure.  9 Q In your schooling and training what  10 rules, codes, provisions does an architect  11 follow in performing their work?  12 A Well, I mean, in schooling we really  13 didn't get into codes and that type of  14 information. I mean, typically school taught us  15 mostly, you know, design. There was a little  16 bit of, you know, professional practice is what  17 they call it where an architect would come in  18 and just kind of talk about the business; but  19 usually that stuff you learn after you start  20 working, you know, when you work with an  21 experienced person in the office.  22 Q When VOA starts a project, you just  23 don't design something without considering the  24 codes and --</p>	<p style="text-align: right;">Page 28</p> <p>1 conform with those codes?  2 A Yes.  3 Q And if your work doesn't -- if something  4 the owner is asking you to do doesn't conform  5 with a particular code, the architect would have  6 to advise them of that, correct?  7 A Yes.  8 Q And you would have to advise them of  9 that. If they insisted on going ahead and  10 having you draft something that didn't conform  11 with the code, what's the architect's  12 responsibility at that point?  13 A Well, we would hopefully tell them.  14 Q You can't do it that way?  15 A Right.  16 Q You wouldn't allow them to use documents  17 that you drafted that didn't conform with a  18 code?  19 A Right.  20 Q Additional -- contention additional  21 services, are you familiar with that?  22 A Yes.  23 Q Can there be revisions, drawings, and  24 specifications or other documents that weren't a</p>
<p style="text-align: right;">Page 27</p> <p>1 A Correct.  2 Q Do you go to references? Do you go to  3 standard forms that you guys have? What do you  4 guys usually use?  5 A Typically we do -- you know, there would  6 be a code analysis or we do -- whatever code the  7 project is required to be billed by, that's what  8 we use, you know, for building -- drawing the  9 drawings to comply by the code.  10 Q What is the -- is there any general  11 codes or national standards that you guys abide  12 by?  13 A There is a variety of them. Chicago  14 building code has their own. There is the IBC,  15 which is the, you know, Illinois building code.  16 There is a variety of them. It just depends on  17 what -- sometimes they do it by region. What  18 they mandate they use. Sometimes they do it by  19 city. So, you know, whatever region, they  20 mandate what kind of code you use.  21 Q But you know on every project there are  22 certain codes that you've got to follow?  23 A Yes.  24 Q And you know that your work has to</p>	<p style="text-align: right;">Page 29</p> <p>1 part of the original agreement?  2 A Yes, there could be.  3 Q Are those revisions, drawings, or  4 specifications required by the enactment or the  5 revision of any codes, laws, or regulations  6 after the preparation of the document that can  7 come up?  8 A Yes.  9 Q And if it does, as the architect and  10 you're asked to do some revision or some code  11 comes into effect, you'll notify the owner and  12 say that we have to revise something because of  13 some change?  14 A Well, I guess it depends. Because  15 typically when you start a project and you're  16 designing to the code that's current at the  17 time, that's what you're designing to. You  18 know, codes can change over a year, over two  19 years. So if you have a project that last five  20 years, you know, you're required to design by  21 the code that you designed at the time you  22 started the project. They won't require you to,  23 you know, scrap everything that you've already  24 done just because the new codes come out and</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 that's what it is.</p> <p>2 Q An example might be if the fire 3 protection agency required three exit signs on a 4 particular floor and then they changed the code 5 to require four and it doesn't involve a 6 substantial change in the project, there may be 7 a requirement to update to the four signs, 8 correct?</p> <p>9 A If the owner would like, I mean, yes. 10 We typically would get direction from the owner 11 saying, you know, I know this was done this way. 12 Since then, you know, it's changed and we would 13 like to go by this change. Then they would 14 direct us to that, yes.</p> <p>15 Q Someone has to notify you of the 16 change?</p> <p>17 A Yes, exactly.</p> <p>18 Q Then you guys have to design it in 19 accordance with the new code if that's what's 20 required?</p> <p>21 A Yes.</p> <p>22 Q Is it true that as an architect that 23 your drawings have to conform -- sorry. Strike 24 that.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. BATTLE: Counsel, your question was 2 is that a true statement?</p> <p>3 MR. O'CONNOR: Yes.</p> <p>4 THE WITNESS: I would agree with that.</p> <p>5 BY MR. O'CONNOR:</p> <p>6 Q In addition, the architect has to use 7 its best efforts to obtain at least -- at the 8 earliest practicable time review of the drawings 9 and specifications from any governmental agency 10 having authority over the project, quote, 11 unquote, authority? Do you see that sentence?</p> <p>12 A Yes.</p> <p>13 Q Is that also a standard thing that the 14 architect has to do?</p> <p>15 A I would agree.</p> <p>16 Q Then I'm going to shift you to the rider 17 which comes at the end of this, and it has a 18 page two on it. Under Section 7 it indicates 19 there that the system by which substantial 20 completion -- what the process is. Does this 21 describe accurately the process -- and I'll 22 paraphrase it for you -- that when the 23 construction manager considers the contractor's 24 work or a portion thereof substantially</p>
<p style="text-align: right;">Page 31</p> <p>1 Is it true that as an architect the 2 drawings and specifications have to conform with 3 all applicable federal, state, and local laws 4 statutes, ordinances, rules, regulations, 5 orders, or other legal requirements, including 6 but not limited to all zoning, building, 7 occupancy, environmental, and land use laws, 8 requirements, regulations, and ordinances 9 relating to the construction, use, and occupancy 10 of the project existing at the time of 11 preparation of the drawings and 12 specifications?</p> <p>13 A That's a little long. Is there --</p> <p>14 MS. ELRABADI: Can you break that up?</p> <p>15 MR. O'CONNOR: Sure. You can take a 16 look right there.</p> <p>17 THE WITNESS: Just the highlighted 18 portion?</p> <p>19 MS. ELRABADI: Can you say for the 20 record what you're reading from?</p> <p>21 MR. O'CONNOR: It's group -- it's Migon 22 Group Exhibit 1 of the contract, and it's page 23 24, Article 13, other conditions and services 24 under paragraph 13.4.</p>	<p style="text-align: right;">Page 33</p> <p>1 complete, the construction manager with the 2 owner prepares a list of incomplete or 3 unsatisfactory items or a punch list? Is that 4 what happens?</p> <p>5 A I don't remember that that was the way 6 it went.</p> <p>7 Q Okay.</p> <p>8 On this project -- you are saying on 9 this project you don't recall it being operated 10 in that fashion?</p> <p>11 A Right, I don't recall it being operated. 12 I recall we did get a punch list from Jacobs, 13 but then we also did our own punch list.</p> <p>14 Q So in a sense you as the architect being 15 on-site were doing some of the punch list items 16 on behalf of the owner or doing the inspections 17 on behalf of the owner?</p> <p>18 A Yes.</p> <p>19 Q In essence in this paragraph you were 20 taking on the role or acting as the 21 representative of the owner in identifying some 22 of the punch list items?</p> <p>23 A Yes.</p> <p>24 Q You were the one consulting with the</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 construction manager to determine which punch 2 list items needed to be completed or not 3 completed? 4 A What we did was we gave them a list of, 5 you know, some of the items that we had put on 6 our punch list, and they distributed it to the 7 contractors who were responsible for that 8 work. 9 Q Much like -- that's what I'm saying. In 10 this paragraph it's much like the owner would 11 have to do, submit a list to the contractor. 12 You as the owner representative were submitting 13 them on behalf of the owner? 14 A Yes. 15 Q When a certificate of substantial 16 completion is done, it has to be signed by 17 several people; isn't that true? 18 A Yes, typically. 19 Q It has to be signed by -- when you're 20 operating such as at this Stagg School, it has 21 to be signed by the architect, correct? 22 A Yes. 23 Q It has to be signed by the construction 24 manager?</p>	<p style="text-align: right;">Page 36</p> <p>1 are the ones issuing it. So our signature says 2 that the building is substantially complete. 3 Q Then what's the point of having other 4 people sign off on it? 5 A Well, that's a matter -- I mean, I'm not 6 sure why they need to sign off. It's just a 7 matter of them, I assume, showing them that 8 there is a certificate that's issued and they 9 agree to the punch list items, that they have to 10 correct them. 11 Q I'm going to show you what's been 12 previously marked Elaine Fitzgerald Exhibit 13 No. 2. Looking at Exhibit No. 2 it's just a two 14 page certificate of substantial completion 15 regarding this project, correct? 16 A Yes. 17 Q This document in and of itself is 18 actually incomplete because there should be 19 attached to it punch list items that are 20 enumerated that would tell what is left to be 21 done, correct? 22 A Yes. 23 Q Have you seen that document with the 24 punch list attached to it at all in this case?</p>
<p style="text-align: right;">Page 35</p> <p>1 A Yes. 2 Q It has to be signed by the contractor 3 itself? 4 A Yes. 5 Q And it has to be signed by the owner? 6 A Yes. 7 Q Until all of those signatures are in 8 place, you don't have an agreement as to 9 substantial completion; isn't that true? 10 A Well, we give -- we issue the initial 11 document. We send that to the owner and I 12 believe it was the construction manager at the 13 time, and they would have been responsible for 14 getting signatures. 15 Q But until it's actually signed, you 16 don't have a certificate of substantial 17 completion. That's why it's a document that's 18 called a certificate, right? 19 MR. BATTLE: Objection, he asked and 20 answered that question. 21 MR. VELAZQUEZ: Join. 22 BY MR. O'CONNOR: 23 Q Go ahead and answer. 24 A No. I mean, that's the certificate. We</p>	<p style="text-align: right;">Page 37</p> <p>1 A Typically, yes, we would. 2 Q In this case have you -- do you recall 3 seeing that with the attachments to it? 4 A Well, I was the one that issued this, 5 and I put a punch list with it. 6 Q Do you know what would have been 7 contained in that punch list? 8 A I don't remember. 9 Q Are you talking about pages and pages? 10 A Yes, pages. I assume pages. 11 Q I want to look at -- is this the one you 12 submitted in this case that has your name on the 13 bottom? 14 A Yes, it has my name on the bottom. 15 Q It has the date of 5/21/02 under your 16 name, correct? 17 A Yes. 18 Q On page two it has Paschen signing off 19 on it in August of '02. Do you see that? 20 A Yes. 21 Q Do you know why Paschen signed off on it 22 three months after you did? 23 A I don't know. 24 Q And do you know if in this project the</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 owner ever signed off on this certificate?  2 A I don't know.  3 Q Do you know if Jacob's construction  4 manager ever signed off on this certificate?  5 A That, I don't know either.  6 Q Normally wouldn't a construction manager  7 have to sign off on the certificate?  8 MR. VELAZQUEZ: Objection. He has asked  9 and answered.  10 BY MR. O'CONNOR:  11 Q Such as this?  12 A Well, I mean, we're the ones that start  13 it. So when they get it, they are going to have  14 to sign off on it, but basically what we do is  15 we attach the punch list. So whether it's a  16 matter of them signing off on it when the punch  17 list is complete or, you know, when they get the  18 certificate, I'm not positive when the actual  19 sign off takes place.  20 Q The construction manager is not  21 performing the actual work. They are  22 supervising all the construction, correct?  23 A Yes.  24 Q Their role is in the technical</p>	<p style="text-align: right;">Page 40</p> <p>1 (Whereupon, the record was  2 read by the court  3 reporter.)  4 THE WITNESS: I wouldn't agree with  5 that. I mean, we're the ones that initiate this  6 document, and we walk through the space, you  7 know, to check out everything if it's basically  8 complete so the owner can use it. So, I mean,  9 since we are the ones issuing the document, when  10 we say it's substantially complete, that's the  11 date. I mean, that's how I've always done it  12 and how we've been taught to do it.  13 BY MR. O'CONNOR:  14 Q Then what aspect does the construction  15 manager punch list play a role in any of this?  16 MR. VELAZQUEZ: Objection, foundation.  17 THE WITNESS: Well, I mean, they are the  18 ones that are on the job. Their punch list in  19 addition to ours still requires the contractor  20 to complete the work. So they are basically  21 also monitoring the work, and if there is  22 something that they see that hasn't been done,  23 they are responsible -- I guess according to  24 whatever that rider was, they are also</p>
<p style="text-align: right;">Page 39</p> <p>1 day-to-day aspects of what's going on in the  2 project, right?  3 A Yes.  4 Q They have to either agree with your  5 punch list items or disagree. They may even add  6 things to your punch list items; isn't that  7 true?  8 A That's correct.  9 Q So they may have their own punch list  10 items in addition to yours?  11 A Yes.  12 Q So until the construction manager and  13 yourself supply a full punch list of items, you  14 don't have an agreement as to the substantial  15 completion aspect of the project?  16 MR. BATTLE: Objection to the term  17 agreement, and he has already testified to what  18 substantial completion certificate stands for.  19 MR. VELAZQUEZ: Join.  20 BY MR. O'CONNOR:  21 Q Go ahead. You can answer the question.  22 A Can you repeat the question?  23 MR. O'CONNOR: Sure.  24 Can you repeat the question?</p>	<p style="text-align: right;">Page 41</p> <p>1 responsible to provide some sort of punch  2 list.  3 BY MR. O'CONNOR:  4 Q So all this document says is from the  5 architectural standpoint that you're issuing  6 your aspect of a certificate of substantial  7 completion with your punch list document?  8 MR. BATTLE: Objection. The document  9 speaks for itself.  10 MR. VELAZQUEZ: I join.  11 THE WITNESS: Basically we're saying  12 that the building or the construction area that  13 we've issued the certificate of substantial  14 completion for, you know, basically says that  15 the work is complete to the point where the  16 owner can use it for its intended purpose.  17 MR. O'CONNOR: We'll get to that in a  18 second.  19 BY MR. O'CONNOR:  20 Q What I'm getting at is this is a  21 certificate issued by VOA that it's their  22 position that it's reached that point?  23 A Yes.  24 Q When it lists all these sections in</p>

<p style="text-align: right;">Page 42</p> <p>1 here, can you tell me what sections this is    2 referring to or what portions of the building?    3 A Which sections?    4 Q Up here. It says project or designated    5 portions shall include, and it has a list of    6 areas.    7 A They are room numbers.    8 Q The area that involved the theatre or    9 the staging area, was that the E section?    10 A I don't recall.    11 Q Was the theatre any of the S sections?    12 A I'm not sure. They may have been rooms    13 that were adjacent.    14 Q Do you recall any of the designation    15 that went for the theatre or staging area?    16 A No, I don't. It's been a while.    17 Q So you don't even know if this document    18 applies to the theatre or stage section area?    19 A The only thing that would lead me to    20 believe it is area PA, performing arts. That    21 was what we, you know, designated performing    22 arts. So PA was the performing arts theatre.    23 Q And what is the first, second, and third    24 floor relating to the performing arts theatre?</p>	<p style="text-align: right;">Page 44</p> <p>1 number on the punch list and they know exactly    2 what area was effected. So I think – I try to    3 do it where you list the room number on the    4 certificate and with the punch list you have a    5 room number that identifies, you know, if there    6 is any punch list items remaining in that    7 room.    8 Q You said something earlier that's even    9 contained in this document and it's under the    10 exceptions on the -- after the exceptions on the    11 following page. The second line says    12 substantial completion is the stage in the    13 process of the work when the work or    14 designated --    15 MS. ELRABADI: Counsel, it said    16 progress.    17 MR. O'CONNOR: Sorry.    18 BY MR. O'CONNOR:    19 Q Substantial completion is the stage in    20 the progress of the work when the work or    21 designated portion thereof is sufficiently    22 complete in accordance with the contract    23 documents so the owner can occupy or utilize the    24 work for its intended use. Do you see that?</p>
<p style="text-align: right;">Page 43</p> <p>1 A I believe there was a first, second, and    2 third floor that corresponded to the theatre.    3 Q The theatre itself only has one floor,    4 correct?    5 A Yes, but there is a cat walk system.    6 There is – I think there was a floor    7 intermediate that may have been adjacent to it.    8 So that's basically what it would entail.    9 Q Is there a reason that there would be    10 specific rooms designated and not other rooms?    11 Does that indicate that there is areas that may    12 not in the performing arts section be    13 substantially completed?    14 A Well, this basically list the areas that    15 this certificate of substantial completion was    16 issued for.    17 Q What I'm getting at is if it was the    18 entire performing arts section, you would just    19 be able to put area of entire performing arts    20 section and not designate the area, right?    21 A Well, typically the reason you do    22 something like this would be so that you have    23 room numbers, and with a punch list someone can    24 take a look now that you've issued the room</p>	<p style="text-align: right;">Page 45</p> <p>1 A Yes.    2 Q Is that your definition of substantial    3 completion?    4 A According to this, yes.    5 Q In this project was that your definition    6 of substantial completion?    7 A Yes.    8 Q So that meant that the owner had to be    9 able to occupy and use the work area for its    10 intended purpose?    11 A Yeah, they can utilize the spaces for    12 what they were designed to.    13 Q In order to do that, you're aware of the    14 fact that the owner has to have an occupancy    15 permit, correct?    16 A I believe so.    17 Q They have to have at least a temporary    18 occupancy permanent, if not a full occupancy    19 permanent?    20 A Okay.    21 Q Correct?    22 A I think so.    23 Q You went through this document in your    24 other deposition, right?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 A Yes.  2 Q I'll show you Moss Exhibit No. 5, which  3 is the two-page document from May 20, 2002.  4 First I want to note that the  5 May 20th document is the day before you signed  6 this certificate of substantial completion,  7 correct?  8 A Yes.  9 Q Does that jar your memory about when in  10 fact -- strike that.  11 Do you recall this person actually  12 going through the building? Were you there?  13 A No, I wasn't.  14 Q Did a copy of this document get passed  15 along to you?  16 A I didn't see it. I know this was asked  17 at the last deposition, but I didn't see it,  18 no.  19 Q So when you issued your certificate of  20 substantial completion, you did not have  21 knowledge of the document from the Fire  22 Protection Division?  23 A No.  24 Q If you had knowledge of the Fire</p>	<p style="text-align: right;">Page 48</p> <p>1 THE WITNESS: I'm sorry. What was the  2 question?  3 BY MR. O'CONNOR:  4 Q If an owner can't occupy the space,  5 would you agree with me that they can't utilize  6 it for its intended use?  7 MR. VELAZQUEZ: Objection, form and  8 foundation.  9 THE WITNESS: I wouldn't agree with  10 that. I mean, when we go through it I'm issuing  11 a certificate of substantial completion based  12 on, you know, the design of the building, if  13 they built it according to the documents and  14 specifications. I'm not there to see if it's  15 okay to be occupied, you know, I guess what  16 they're doing here. I mean, that's not the  17 purpose for us to issue that certificate.  18 Q Let's go back a second.  19 The performance arts theatre is used  20 to put on shows, presentations, correct?  21 A Yes.  22 Q It's for the general public to come in  23 and watch children performing theatre and other  24 things on the stage?</p>
<p style="text-align: right;">Page 47</p> <p>1 Protection District's recommendations or what's  2 provided in that document, would you have added  3 the things on there to your punch list?  4 A No.  5 Q Looking at that document, it indicates  6 that it is an issue for a temporary occupancy  7 permit only, correct?  8 A Okay.  9 Q Is that true?  10 A That's what it says there, yes.  11 Q What is a temporary occupancy permit?  12 A I don't know.  13 Q As an architect has that term ever come  14 up with you before?  15 A No, it hasn't.  16 Q Do you understand what an occupancy  17 permit is generally?  18 A I assume it allows the owner to occupy  19 the space.  20 Q And if the owner can't occupy the space,  21 would you agree with me that it couldn't be used  22 for its intended use or for its designated  23 use?  24 MR. VELAZQUEZ: Objection, foundation.</p>	<p style="text-align: right;">Page 49</p> <p>1 A Yes.  2 Q That's its intended use?  3 A Yes.  4 Q And you understood that when you were  5 going through this project?  6 A Yes.  7 Q If it could not be occupied by students  8 or other people safely, would you agree that  9 it's not being -- it's not able to be utilized  10 for its intended purpose?  11 MR. VELAZQUEZ: Objection to form and  12 foundation.  13 MS. ELRABADI: I join.  14 BY MR. O'CONNOR:  15 Q Go ahead.  16 A What we're doing here I think is  17 something different than what the fire district  18 is doing.  19 Q I want to get back to my question.  20 MR. BATTLE: Hold on. Let him finish  21 his answer.  22 MR. O'CONNOR: That isn't an answer to  23 my question.  24 MR. BATTLE: But he didn't finish his</p>

13 (Pages 46 to 49)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 50</p> <p>1 answer. If he finishes and you determine that 2 that's not an answer to your question, you can 3 ask him a different question. 4 Continue. 5 THE WITNESS: Basically, you know, it 6 appears that the fire district has the final say 7 in saying who can occupy the space and if it can 8 be occupied, not me. I mean, the architect -- 9 we're looking at this as saying substantial 10 completion is, you know, they've constructed the 11 building and we've got some punch list items but 12 the building can be used, you know. I mean, 13 obviously this is another layer that I'm not 14 involved with. I mean, the owner has to get an 15 occupancy certificate, and that doesn't come 16 from us. 17 MR. O'CONNOR: Can you repeat my 18 question so I can get a correct answer to my 19 question? 20 (Whereupon, the record was 21 read by the court 22 reporter.) 23 MR. VELAZQUEZ: Same objection. 24 THE WITNESS: Well, I wouldn't know if</p>	<p style="text-align: right;">Page 52</p> <p>1 Paschen until August? 2 MR. BATTLE: Objection, asked and 3 answered, and it causes this witness to 4 speculate. 5 MR. VELAZQUEZ: Join. 6 THE WITNESS: I don't know. 7 BY MR. O'CONNOR: 8 Q Is that typical of what you've seen in 9 the past, a three month -- 10 A I can't say. I don't recall. 11 Q You've now had a chance to look at Moss 12 Exhibit No. 5, and I think you've gone through 13 it I think you said at the other deposition? 14 A Yes. 15 Q Paragraph three, if you had been 16 provided with this document from the Fire 17 Protection District at the time, how would you 18 have interpreted paragraph three? 19 A I don't know. I wasn't there when they 20 were walking through this, so I am not going to 21 give an interpretation on it. 22 Q You didn't -- you wouldn't be able to 23 understand what they mean by provide fall 24 protection over orchestra pit when not in use?</p>
<p style="text-align: right;">Page 51</p> <p>1 it was going to be occupied safely or not. I 2 don't make that determination. 3 BY MR. O'CONNOR: 4 Q So when you issue your certificate of 5 substantial completion, you're not certifying 6 that it could be occupied or used by the owner 7 safely? 8 A That would be a fair statement. 9 Q Even if you attach a list of items to be 10 corrected, am I correct that this document 11 provides that the failure to include any items 12 on such list does not alter the responsibility 13 of the contractor to complete all work in 14 accordance with the contract documents? 15 A Yes, I agree. 16 Q So in other words, if you guys miss 17 something when you went through on the punch 18 list, that doesn't relieve them of the liability 19 of doing everything they are suppose to do? 20 A Right. 21 Q Do you recall in this instance why this 22 document was signed by Paschen -- strike that -- 23 why this document was, Exhibit No. 2 Fitzgerald, 24 was signed by you in May and not signed by</p>	<p style="text-align: right;">Page 53</p> <p>1 A I don't know. I don't know what he 2 meant by it. 3 Q What type of fall protection could you 4 provide over an orchestra pit when it's not in 5 use? 6 A I don't know. 7 Q As an architect if I asked you what kind 8 of fall protection could I provide over an 9 orchestra pit when it's not in use -- 10 A I don't know. 11 Q Do you know anything about -- have you 12 ever heard of the term pit covers? 13 A Yes, I have. 14 Q What are pit covers used for? 15 A I mean basically it's an extension of 16 the stage. 17 Q Would a pit cover provide fall 18 protection over the orchestra pit when it's not 19 in use? 20 A Possibly. 21 Q Is there a type of lift or a floor that 22 can raise up in an orchestra pit? 23 A I don't know too much about them. I 24 mean, I know the ones that were eventually</p>

14 (Pages 50 to 53)

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<p style="text-align: right;">Page 54</p> <p>1 installed in the District they just -- it was  2 just a panel that got put in there.  3 Q You would agree with me that doing a  4 performing arts theatre that have orchestra pits  5 is a very specialized area?  6 A Yes.  7 Q And, in fact, that's why, is it your  8 understanding, that VOA had a relationship with  9 Schuler &amp; Shook was because of the special  10 nature of this area?  11 A Yes.  12 Q And you were consulting with Schuler &amp;  13 Shook because of their knowledge of doing  14 theatre or theatre type areas?  15 A Well, I mean, VOA was, not me  16 personally.  17 Q That's what I mean by that, VOA?  18 A Yes.  19 Q And were you conversing with Schuler &amp;  20 Shook even up in 2002 on a regular basis as to  21 their recommendations as it applied to the  22 theatre area?  23 A Well, I mean, at the time I started the  24 project typically what I had talked to them</p>	<p>1 run into them.  2 Q Do you know what an orchestra pit filler  3 platform is?  4 A A platform?  5 Q Yes.  6 A I'm not sure. I know what an orchestra  7 pit filler is.  8 Q I'll show you what I have marked Migon  9 Group Exhibit No. 2 with today's date and ask  10 you to take a look at that.  11 Have you seen that document  12 before?  13 A No, I haven't.  14 Q Take a look at it for a second.  15 Have you had a chance to look at  16 it?  17 A Yes.  18 Q When you came on this project was it  19 your understanding that Schuler &amp; Shook was  20 involved in the project from even the design  21 phase?  22 A Yes.  23 Q And was it your understanding that  24 Schuler &amp; Shook was consulted in the design</p>
<p style="text-align: right;">Page 55</p> <p>1 about was if there was a punch list that needed  2 to be done on the performing arts theatre. If  3 there was a contractor that was finishing it up,  4 they would require under their contract to do a  5 walk-through similar to how we do and, you know,  6 provide a punch list on any items that were  7 unfinished.  8 Q Would you walk through with a  9 representative of Schuler &amp; Shook? Would they  10 go on their own, sometimes together, sometimes  11 not?  12 A It was a little bit of both. I believe  13 their commissioning of the theatre, as they put  14 it, lasted a few days because they checked all  15 the sound equipment. They checked all the  16 lighting, all the equipment that was suppose to  17 be working. You know, so they did all of that.  18 If they were there doing their punch list and I  19 just happened to come in, I would see them; but  20 for the most part it wasn't like, you know, I  21 called them and they tell me they are going to  22 be here and here this day and, you know, we  23 would meet up and I would spend the whole day  24 with them. It was more on occasion that I would</p>	<p>1 phase specifically related to the theatre and  2 the buildup of the theatre area?  3 A Yes.  4 Q You know Bob Shook?  5 A No, I don't.  6 Q He's not the guy generally walking out  7 doing inspections, right?  8 A I don't think so.  9 Q You wouldn't hope so.  10 This document which is dated  11 August 4th of 1999 indicates on page three a  12 proposal for an orchestra pit filler platform,  13 and it gives a price next to it. Do you see  14 that?  15 A Yes, I do.  16 Q In this document do you know what that  17 is referring to?  18 A No, I don't. I mean, I assume it's just  19 a pit filler.  20 Q What is a pit filler?  21 A It's just those panels that they use to  22 fill the area over a stage to extend it.  23 Q Is that the same as a pit cover?  24 A I assume, yes. That's what I envision</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 as a pit filler.</p> <p>2 Q It's something to cover it when it's not 3 in use?</p> <p>4 A Correct.</p> <p>5 Q And you don't have any knowledge about 6 why it was talked about originally and not used 7 later in this particular --</p> <p>8 A No. Like I said, I came on to the 9 project in February of '02.</p> <p>10 Q In February of '02 were you attending 11 the weekly meetings of the construction 12 manager?</p> <p>13 A Whenever I had started, yes, I started 14 to attend the meetings.</p> <p>15 Q Would it be yourself and Elaine 16 Fitzgerald, both of you, or it depends on who is 17 there? How did that work?</p> <p>18 A Sometimes on occasion it would just be 19 her. Sometimes it would only be me. Sometimes 20 it would be both of us.</p> <p>21 Q And the meetings were held by Jacobs?</p> <p>22 A Yes.</p> <p>23 Q Who from Jacobs do you recall as being 24 the person that would lead the meeting?</p>	<p style="text-align: right;">Page 60</p> <p>1 A No. I mean, I recall that Schuler &amp; 2 Shook asked for additional services for the pit 3 fillers.</p> <p>4 Q Was it something where you had to have 5 an additional agreement with the owner that they 6 would pay you for it?</p> <p>7 A I don't recall. I mean, I know they did 8 get compensated additionally. I mean, 9 typically, yes, there would be some sort of 10 modification to our contract that would, you 11 know, identify the additional services being 12 requested for.</p> <p>13 Q And I'll show you what's been marked 14 Moss Exhibit No. 9. You've seen that document 15 before?</p> <p>16 A It looks like the specification for the 17 pit fillers.</p> <p>18 Q Do you recall that Schuler &amp; Shook 19 provided the specifications for the pit covers 20 after you were requested by the school district 21 to look into that?</p> <p>22 A Yes.</p> <p>23 Q And it says -- just to clarify what you 24 had said earlier, it says up in the right hand</p>
<p style="text-align: right;">Page 59</p> <p>1 A I think their superintendent's name was 2 Gerry.</p> <p>3 Q Meyer?</p> <p>4 A Gerry Meyer, yes, that's him.</p> <p>5 Q Do you recall at the meetings when you 6 first came on this project that the need for a 7 pit cover was discussed at those meetings?</p> <p>8 A I think when I had started. I don't 9 know if it was immediately, but the owner did 10 ask us to look into getting pit covers.</p> <p>11 Q And what did you understand -- strike 12 that.</p> <p>13 Did you know that the -- why the 14 owner was asking you to look into that?</p> <p>15 A No, they just asked us to look into 16 it.</p> <p>17 Q Had you known at that time that they had 18 asked you -- that you guys had investigated it 19 at the beginning of the project?</p> <p>20 A No, I didn't.</p> <p>21 Q When you were asked to look into it, was 22 it something that had to be charged additional?</p> <p>23 Was it something already contained in the 24 contract? What was it?</p>	<p style="text-align: right;">Page 61</p> <p>1 corner orchestra pit filler, right?</p> <p>2 A Yes.</p> <p>3 Q That's why you interpreted pit filler to 4 mean the same thing as that other document?</p> <p>5 A Yes.</p> <p>6 Q Do you know -- this is dated 7 April 17, 2002. Do you know was it you yourself 8 that actually spurred Schuler &amp; Shook to draft 9 this document?</p> <p>10 A Yes.</p> <p>11 Q What did you -- who did you convey it to 12 at Schuler &amp; Shook and what was your 13 conversation to them?</p> <p>14 A Jeff Childs was the person that I had 15 contacted there, and I had just told him that 16 the owner was interested in getting the 17 specifications and just a layout for the pit 18 fillers. So we had asked them to come up with 19 their specifications so they can send something 20 out to get priced.</p> <p>21 Q And they then in turn produced this 22 document?</p> <p>23 A Yes.</p> <p>24 Q And by this document I mean Moss Exhibit</p>

16 (Pages 58 to 61)

<p>1 No. 9.</p> <p>2 Did they actually produce this</p> <p>3 document or they produced another document that</p> <p>4 VOA kind of conformed into this document?</p> <p>5 A Well, we -- they provided the</p> <p>6 specification, and I didn't see any of this</p> <p>7 stuff. This was -- must have been done by the</p> <p>8 owner. Because my recollection was they had</p> <p>9 asked us to give them the specification and</p> <p>10 basically a drawing of what the pit filler</p> <p>11 looked like. We gave that to the owner, and</p> <p>12 then the owner was going to directly solicit</p> <p>13 bids from manufacturers versus going through the</p> <p>14 general contractor to get, you know, the bids</p> <p>15 for these pit fillers.</p> <p>16 Q At the top it says VOA &amp; Associates,</p> <p>17 Incorporated?</p> <p>18 A Yes.</p> <p>19 Q And then it has certain things written</p> <p>20 underneath it?</p> <p>21 A Yes.</p> <p>22 Q Which portion are you saying wasn't</p> <p>23 yours or was yours?</p> <p>24 A This part here, the interior buildout</p>	Page 62	Page 64
<p>1 portion. We never put that on there.</p> <p>2 Q Because you weren't contracting or</p> <p>3 looking into pit covers for all three schools?</p> <p>4 Is that an accurate statement?</p> <p>5 A Yes, yes, we weren't doing that.</p> <p>6 Q When they originally asked you to look</p> <p>7 into Schuler &amp; Shook, was it about all three</p> <p>8 schools or about one?</p> <p>9 A Well, I believe it was going to be for</p> <p>10 all three schools.</p> <p>11 Q And they came back -- was there ever any</p> <p>12 price discussion as to what this would cost?</p> <p>13 A I don't recall. I mean, my</p> <p>14 understanding was that these pit fillers they</p> <p>15 can, you know, range from the Cadillac model to</p> <p>16 the Ugo model. You know, they can be a</p> <p>17 variety -- made a variety of ways, but I believe</p> <p>18 the District was budget conscious. So they</p> <p>19 probably got one of the lower end models.</p> <p>20 So they had asked us to look into,</p> <p>21 you know, the different types. I thought</p> <p>22 Schuler &amp; Shook may have looked into the kind of</p> <p>23 pricing that they would get for doing like a</p> <p>24 very high end one versus something that is a</p>	Page 63	Page 65

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 information, the file, and sent it to the    2 District because the District said that they    3 would put their front end on it. So that's what    4 he means by that.</p> <p>5 Q So the word front end on it means --    6 refers to the actual contract documents?</p> <p>7 A It's something that you put in the    8 specifications, terms and conditions, similar to    9 that.</p> <p>10 Q It has nothing to do with markup?</p> <p>11 A No, that has nothing to do with markup,    12 not on our end.</p> <p>13 Q He then asks you to return the signed    14 proposal?</p> <p>15 A Yes.</p> <p>16 Q That would be to authorize Schuler &amp;    17 Shook to contract out to do that work?</p> <p>18 A Yes.</p> <p>19 Q Then there is an E-mail from yourself    20 back to Jeff Childs, 4/9 of '02 regarding, the    21 pit covers. Was that an E-mail that you    22 drafted?</p> <p>23 A Yes. I sent him the E-mail telling    24 him -- I think this is the one. Let me just</p>	<p>1 back and forth?</p> <p>2 A I don't recall. I tried to dig as many    3 of them up as I could. That is what I came    4 up.</p> <p>5 Q Would you have sent some E-mail at some    6 point that said to Schuler &amp; Shook that the    7 school district decided to pursue them on their    8 own, don't do any more work on the pit covers?</p> <p>9 A No. The District wanted us to provide    10 the initial design, and really that was it.    11 What Schuler &amp; Shook was contracted to do with    12 that was design the -- come up with the    13 specification, provide a drawing, and then when    14 the pit covers were eventually installed they    15 would go ahead and, you know, go out there to do    16 a punch list on them. They would also look at    17 the shop drawings when they came in from whoever    18 the District decided they were going to, you    19 know, hire for that work.</p> <p>20 Q So Schuler &amp; Shook would still have some    21 involvement?</p> <p>22 A Yes, that's correct.</p> <p>23 Q Even if the school district went out and    24 actually bought it directly from the</p>
<p style="text-align: right;">Page 67</p> <p>1 take a quick look. Basically I had drafted that    2 E-mail to Jeff, you know, identifying that I had    3 a phone conversation with Bob Hughes, and he    4 told us to go with the pit covers basically    5 telling him that he would pay for the additional    6 services for Schuler &amp; Shook. That's why I sent    7 that E-mail to release him.</p> <p>8 Q This is to release him to go look into    9 the project?</p> <p>10 A To design the pit fillers, to provide    11 the specifications and the drawing.</p> <p>12 Q So this one would have proceeded the one    13 that comes up on top?</p> <p>14 A Yes, correct.</p> <p>15 Q Then the April 19th E-mail is just Bob    16 Hughes approving the added service for the pit    17 fillers?</p> <p>18 A Yes, that's correct.</p> <p>19 Q That's the added service to look into    20 drawing up the specifications that were    21 eventually drawn up?</p> <p>22 A Yes.</p> <p>23 Q Was there ever any other E-mails    24 concerning the pit covers that would have went</p>	<p style="text-align: right;">Page 69</p> <p>1 manufacturer, Schuler &amp; Shook has to make sure    2 that it's going to conform or meet into this    3 particular theatre?</p> <p>4 A Well, that was part of what they had    5 asked the additional services for was that they    6 were going to, you know, provide the    7 specification, give a drawing for the    8 manufacturer to provide pricing on, and they    9 would also look at the shop drawings once the    10 District selected a manufacturer. Then after    11 that when they were all installed, he would come    12 out and take a look at the installation and    13 provide a punch list on the installation if    14 required.</p> <p>15 Q So after this E-mail, really the    16 District had to wait until Schuler &amp; Shook got a    17 list of manufacturers that they could discuss    18 with about what they needed?</p> <p>19 A Let me take a look at this.</p> <p>20 Q The first E-mail you can take a look at    21 it. It points to that?</p> <p>22 A No. What we ended up doing -- the first    23 E-mail I had asked him to look at the    24 manufacturers, and all he did was he put that</p>

18 (Pages 66 to 69)

<p>1 inside of the specifications. So all of the  2 information was inside of the specs already.  3 Q Well, let me ask you this.  4 This E-mail here -- oh, I see it. I  5 have listed four acceptable manufacturers?  6 A Yes. So that's what he said. I think I  7 had asked him to provide some manufacturers  8 here, and he listed them directly in the  9 specifications. So these were the four  10 manufacturers that they have worked with,  11 and these manufacturers provide this type of pit  12 filler.  13 Q Do you know if those manufacturers sent  14 back bids?  15 A I don't know. We weren't involved in  16 reviewing any of the bids from the pit filler  17 manufacturers.  18 Q You were involved in the project when  19 the actual pit filler was installed?  20 A Yes, I was still around, yes.  21 Q SECOA was the one that was chosen?  22 A I don't recall which one.  23 Q Do you recall when the pit cover was  24 actually installed?</p>	Page 70	<p>1 when they selected a manufacturer the  2 manufacturer had to provide a drawing showing  3 how they were going to lay it out, what the pit  4 filler was going to look like and, you know, I  5 think the weights of each panel piece.  6 Q Then you guys would --  7 A So I sent that to Schuler &amp; Shook.  8 Q Then you would respond back to say that  9 this is adequate or not adequate structurally or  10 architecturally, correct?  11 A Correct. What we would do is they would  12 review the shop drawing, and they would put  13 their stamp on it saying that they have looked  14 at it and, you, know it conforms with the  15 specifications.  16 Q And then after it's installed, you would  17 be doing a punch list thing making sure it's  18 installed properly?  19 A Yes, Schuler &amp; Shook did that.  20 Q On your behalf?  21 A Yes.  22 Q And were you with them when they did  23 that?  24 A No, I wasn't.</p>	Page 72
<p>1 A No, I don't.  2 Q Was it that summer? Was it at the start  3 of the next school year in 2002?  4 A I thought it was in the summer, maybe  5 towards the end of the summer.  6 Q Just before school opened?  7 A I believe so.  8 Q Was there an issue once the pit cover  9 was ordered from the manufacturer, a certain  10 aspect of getting all the people together who  11 were going to install it or who was going to put  12 it in?  13 A That, I don't know. The District  14 apparently contracted -- they selected a  15 manufacturer, and I don't know if the  16 manufacturer gave them a quote for installation  17 or if they had to hire somebody to install it.  18 So I don't know.  19 Q Do you know if you had to pass on any  20 information to Schuler &amp; Shook about which one  21 was going to be used or how it was going to be  22 used?  23 A The only thing we would have received  24 from the District is a shop drawing. Basically</p>	Page 71	<p>1 Q Would they have reported back to you  2 after they did that?  3 A Yes.  4 Q Then you would report back to the owner  5 that it meets with your approval or doesn't or  6 whatever the punch list items are?  7 A Yes.  8 Q You were aware of Regalado falling in  9 the pit area at or near the time that it  10 happened?  11 A Yes.  12 Q How did you become aware of it?  13 A I just heard it from the owner.  14 Q And did you know that he had fallen from  15 the stage area down into the pit?  16 A Well, that's what they told us.  17 Q And did the owner express some concern  18 about safety at that point of the pit not being  19 covered?  20 A No.  21 Q Did you have any concern about the pit  22 not being covered having heard that somebody  23 fell in there?  24 A Well, I mean, I knew that they were</p>	Page 73

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 looking at pit fillers, so I didn't have any 2 concern.</p> <p>3 Q Was one of the reasons for the pit's 4 cover a safety issue so people wouldn't fall in 5 there?</p> <p>6 A That, I don't know. Nobody told us that 7 it was a safety issue. The District just asked 8 us to look into get pricing, and we looked at 9 getting the design for it.</p> <p>10 Q After you had heard that man fell, did 11 you consider the pit cover, in addition to part 12 of the design, also a safety issue?</p> <p>13 A No.</p> <p>14 Q Did you hear about a student falling in 15 during a graduation ceremony, falling into the 16 pit?</p> <p>17 A No, I didn't.</p> <p>18 Q After Mr. Madden fell into the pit, did 19 you hear about his incident?</p> <p>20 A I did hear from the owner's rep, Bob 21 Hughes.</p> <p>22 Q And what was said by Bob Hughes?</p> <p>23 A I mean, basically he just fell in there. 24 I don't know. I think he backed into it or</p>	<p style="text-align: right;">Page 76</p> <p>1 A I mean, I don't think that's the case. 2 Sometimes, you know, a code mandates you have a 3 certain amount of accessible bathrooms. 4 Sometimes because you anticipate -- a design 5 makes sense doing it this way and you put an 6 extra one in. I don't think safety is what 7 we're talking about when we're designing 8 something. It's basically applicable code, 9 accessibility, things of that nature.</p> <p>10 Q As part of this project did Consolidated 11 High School District 230 have its own safety 12 rules and procedures?</p> <p>13 A I'm not aware of that.</p> <p>14 Q When you came on the job, you were not 15 made aware that you needed to follow the school 16 district's safety provision?</p> <p>17 A No.</p> <p>18 Q You had meetings with Elaine Fitzgerald, 19 correct?</p> <p>20 A When, during the project?</p> <p>21 Q During the project --</p> <p>22 A Yes.</p> <p>23 Q -- when she was there. 24 And you mentioned you went to the</p>
<p style="text-align: right;">Page 75</p> <p>1 something like that.</p> <p>2 Q Was there any issue of safety that came 3 up at that point?</p> <p>4 A No.</p> <p>5 Q In designing a project as an architect, 6 is one aspect of what you're considering is that 7 you're doing a safe design?</p> <p>8 A Well, I don't think that's what we 9 consider. I mean, what we're asked to do is 10 designed by code.</p> <p>11 Q And the code regulations are designed to 12 comply with safety? It's one of the issues of 13 the code?</p> <p>14 A I don't know. I can't comment on it 15 because I'm not a code writer.</p> <p>16 Q When you design things, sometimes you 17 meet the codes, sometimes you exceed the code, 18 correct?</p> <p>19 A That's true.</p> <p>20 Q And is some of the reasons that you 21 exceed the code is because based on an 22 architect's knowledge, training, and experience 23 you feel that a particular design is a safer 24 aspect to approach on a case?</p>	<p style="text-align: right;">Page 77</p> <p>1 progress meetings, correct?</p> <p>2 A Yes.</p> <p>3 Q At the progress meetings themselves some 4 of the issues that would come up are safety. 5 Some of the issues would be progress of the 6 work?</p> <p>7 A I believe so, yes.</p> <p>8 Q With Elaine Fitzgerald the issues -- 9 what would you be talking about when you had 10 your meetings?</p> <p>11 A Typically it was just stuff that was 12 observed in the field, whether they are working 13 on this area or that area or if there was a 14 question that would come up, you know, if there 15 was a conflict with the drawings or, you know, 16 just something in the field.</p> <p>17 Q You didn't have set times to do that. 18 It would come up when you needed to discuss 19 things?</p> <p>20 A Right. We knew when our weekly meetings 21 were and who was going to cover or if we were 22 both going. So, you know, if she was there and 23 she came back to the office, she would basically 24 tell me, you know, what happened or if there was</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 any issue that came up.</p> <p>2 Q During the weekly -- other than the 3 weekly progress meetings, did you go to any 4 other meetings?</p> <p>5 A Well, we had an owner's meeting every 6 Wednesday morning typically.</p> <p>7 Q What was addressed at the owner's 8 meetings every Wednesday morning?</p> <p>9 A It varied. Basically Jacobs Facilities 10 was there with us. Sometimes the schedule was 11 discussed. Sometimes, you know, the budget was 12 discussed, but it was mostly like those items.</p> <p>13 Q Was anybody else besides VOA, Jacobs, 14 and the owner at those weekly meetings?</p> <p>15 A Just those three people.</p> <p>16 Q And at those meetings was the issue of 17 the pit covers ever discussed?</p> <p>18 A I don't recall.</p> <p>19 Q They may or may not have been?</p> <p>20 A They may or may not have been.</p> <p>21 Q Were issues of safety or concern that 22 the owners had for students or the project or 23 what was going on raised at those Wednesday 24 meetings?</p>	<p style="text-align: right;">Page 80</p> <p>1 THE WITNESS: I just knew he was the 2 superintendent on the job, that he was more or 3 less coordinating all of the contractors.</p> <p>4 BY MR. O'CONNOR:</p> <p>5 Q In terms of if an issue came up about 6 safety, was it him who would address it?</p> <p>7 A I don't know.</p> <p>8 MR. VELAZQUEZ: Objection to foundation 9 and form.</p> <p>10 BY MR. O'CONNOR:</p> <p>11 Q He was doing all of the scheduling?</p> <p>12 MR. VELAZQUEZ: Same objection.</p> <p>13 THE WITNESS: I believe. I think Jacobs 14 was. I'm not sure if him directly was doing 15 that.</p> <p>16 BY MR. O'CONNOR:</p> <p>17 Q We will talk about Jacobs in general 18 instead of him in particular.</p> <p>19 Was Jacobs doing all of the 20 scheduling of the work?</p> <p>21 A Yes.</p> <p>22 Q Coordinating the contractors?</p> <p>23 A Yes, that was my understanding.</p> <p>24 Q If an issue arose between two different</p>
<p style="text-align: right;">Page 79</p> <p>1 A Not that I recall, no.</p> <p>2 Q Was safety a big concern when school was 3 going on?</p> <p>4 A I don't know. I mean, we had nothing to 5 do with it, so it may have been but not, you 6 know, with VOA.</p> <p>7 Q When you were at the meetings, you 8 weren't hearing about the school saying we have 9 got a lot of students around, we want to make 10 sure it's safe at this particular aspect of the 11 project? You didn't hear those at those 12 meetings?</p> <p>13 A No. Typically where the construction 14 was going on those areas were locked off.</p> <p>15 Q Do you need a break?</p> <p>16 A I can use water.</p> <p>17 (Recess taken.)</p> <p>18 BY MR. O'CONNOR:</p> <p>19 Q During the construction project was it 20 your understanding that the person who was 21 running the actual physical part of the job was 22 Gerry Myers?</p> <p>23 MR. VELAZQUEZ: Objection to foundation, 24 form.</p>	<p style="text-align: right;">Page 81</p> <p>1 sets of contractors, was it Jacobs that would 2 resolve it?</p> <p>3 A It depended on what it was.</p> <p>4 Q If two people are scheduled to work in 5 the same area at the same time?</p> <p>6 A That was theirs.</p> <p>7 Q If one person was doing something that 8 interfered with another person's job, would it 9 be Jacobs that would take care of that?</p> <p>10 A Yeah, they would have to resolve that.</p> <p>11 Q In other words, if you were walking 12 through the building and someone came up to you 13 and said, hey, that guy is working over my head 14 and dropping something on my head, you would 15 point and say go talk to Jacobs?</p> <p>16 A I didn't know who was responsible for 17 that, but I would just tell them that it's not 18 my job.</p> <p>19 Q Would you point them or direct them to 20 somebody?</p> <p>21 A I don't know. I mean, I wouldn't. I'm 22 not sure who -- for that type of question who 23 dealt with it.</p> <p>24 Q You wouldn't say go see your foreman, go</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 see Jacobs, go see somebody else?</p> <p>2 A Everybody knew who the responsible party</p> <p>3 was for coordinating everything, so I would</p> <p>4 assume they would know who to talk to.</p> <p>5 Q When you say everyone knew, who did</p> <p>6 everyone know, Jacobs?</p> <p>7 A Yeah, everyone knew Jacobs was the CM.</p> <p>8 Q Did Jacobs walk around with a white</p> <p>9 hat?</p> <p>10 A Yes. They did have something that said</p> <p>11 Jacobs on their hard hat.</p> <p>12 Q In other words, when they were walking</p> <p>13 around everyone took notice and knew who they</p> <p>14 were?</p> <p>15 A Yes.</p> <p>16 Q Kind of puts a mad scramble among all of</p> <p>17 the younger guys?</p> <p>18 A Maybe.</p> <p>19 Q Did you walk around with Jacobs at</p> <p>20 times?</p> <p>21 A Yes, at times we did.</p> <p>22 Q What did you walk around with Jacobs</p> <p>23 for?</p> <p>24 A If they had a question for us, if there</p>	<p style="text-align: right;">Page 84</p> <p>1 because they thought it was up to a certain</p> <p>2 code? They would consult with you?</p> <p>3 A Yes, they typically would.</p> <p>4 Q Was it your understanding that one of</p> <p>5 the job duties of Jacobs is if they identified a</p> <p>6 code or an issue such as that that they would</p> <p>7 consult with you?</p> <p>8 MR. VELAZQUEZ: Objection, foundation.</p> <p>9 THE WITNESS: Yeah, I don't know what</p> <p>10 their contract involved.</p> <p>11 BY MR. O'CONNOR:</p> <p>12 Q I am just asking your general</p> <p>13 understanding of what they were doing on the</p> <p>14 project. Was it your understanding that if they</p> <p>15 came across a code issue or other issues similar</p> <p>16 to that, that they would address that with</p> <p>17 you?</p> <p>18 MR. VELAZQUEZ: Same objection.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. O'CONNOR:</p> <p>21 Q My understanding is you didn't read any</p> <p>22 contracts in this case, right?</p> <p>23 A No, I didn't.</p> <p>24 Q Did anyone tell you what your duties and</p>
<p style="text-align: right;">Page 83</p> <p>1 was something on the drawings that may not have</p> <p>2 worked in the field, they would ask us about</p> <p>3 something, things like ceiling height conflict,</p> <p>4 for example.</p> <p>5 Q A modification that needed to be made</p> <p>6 that couldn't be accounted for at the time that</p> <p>7 you did your drawings, that's what you're</p> <p>8 talking about? A modification that would need</p> <p>9 to be made in the field that couldn't have been</p> <p>10 accounted for when you were doing your</p> <p>11 drawings?</p> <p>12 A Correct, correct.</p> <p>13 Q If something -- if Jacobs had the</p> <p>14 opinion that something you designed didn't meet</p> <p>15 up with a certain code, would they bring that to</p> <p>16 your attention?</p> <p>17 A I would hope so.</p> <p>18 Q You would expect them to?</p> <p>19 A I'm not saying that we would expect them</p> <p>20 to, but if they did, you know, I would hope they</p> <p>21 would.</p> <p>22 Q In other words, they wouldn't just go</p> <p>23 ahead and change something or you wouldn't</p> <p>24 expect them to go ahead and change something</p>	<p style="text-align: right;">Page 85</p> <p>1 responsibilities were on this project?</p> <p>2 A Nobody told me. I mean, on the previous</p> <p>3 project that I worked on for the Department of</p> <p>4 Natural Resources Office I, you know, was doing</p> <p>5 the construction administration. So I was doing</p> <p>6 on-site observation, and just the experience and</p> <p>7 everything I learned from that project I carried</p> <p>8 it on to this one.</p> <p>9 Q Do your duties and responsibilities as a</p> <p>10 field person doing site inspections basically</p> <p>11 remain the same?</p> <p>12 A Yes.</p> <p>13 Q Who assigned you to be on this</p> <p>14 project?</p> <p>15 A The principal in charge, Paul Hansen.</p> <p>16 Q Did Paul Hansen come to the site?</p> <p>17 A When I was on it, I don't recall him</p> <p>18 coming, no.</p> <p>19 Q When you say he is the principal, he was</p> <p>20 the licensed architect over the project?</p> <p>21 A Well, his -- the way our office is I</p> <p>22 guess broken up is a principal heads a studio,</p> <p>23 and the studio heads ten or fifteen people or</p> <p>24 whatever it is. Sometimes they either practice</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 just education or they practice the health care.    2 So he was the principal in charge of, you know,    3 this education project.    4 Q And is he a licensed architect?    5 A Yes, he is.    6 Q Are all the principals over the various    7 sections licensed architects?    8 A Yes, they are.    9 Q One of the requirements of the State    10 requirement is that you operate under a licensed    11 architect as a nonlicensed architect, correct?    12 A Yes.    13 Q So if you had a question or concern, you    14 would go back to Paul Hansen, correct?    15 A Yes.    16 Q Did any questions or issues come up when    17 you were on this project where you had to    18 actually go back to Paul Hansen?    19 A There were but, I mean, I don't recall    20 exactly what they were. I mean, him and I    21 talked regularly. I would give him updates on    22 how the project is going and, you know, things    23 of that nature.    24 Q So he was at least aware of issues and</p>	<p style="text-align: right;">Page 88</p> <p>1 asking for money and I'm just going to ask the    2 owner for it.    3 Q Who prepared the documents relative to    4 that? Did that come from Paul or did that come    5 from you?    6 A I don't know.    7 Q You didn't do it?    8 A No, I didn't do it.    9 Q Would there normally have to be some    10 kind of documents authorizing that?    11 A Authorizing what?    12 Q The additional work or the additional    13 looking into the thing or did that come directly    14 from Schuler &amp; Shook or how did that work?    15 A Schuler &amp; Shook asked us. They sent a    16 proposal to us of how much it was going to be    17 for doing that work.    18 Q And then you would have to submit your    19 own proposal back to the owner?    20 A Yes.    21 Q And what you're telling me is that    22 somebody at your company did that but it wasn't    23 you?    24 A Yeah. I assume somebody did, yes, but</p>
<p style="text-align: right;">Page 87</p> <p>1 things going on with the project?    2 A Yes.    3 Q Was he aware of the issue of the pit    4 covers coming up?    5 A Yes, he was aware of that and that the    6 owner had asked us to look into getting pit    7 covers for the school.    8 Q Was it your understanding that Paul    9 Hansen was on this project from day one?    10 A Yes.    11 Q And Paul Hansen never expressed to you    12 anything about the pit covers ever coming up    13 before that day?    14 A No, no.    15 Q Was he the one that directed you as to    16 how to like charge for the additional cost, how    17 to approach it in terms of the pit cover?    18 A Well, initially what happened was when I    19 had asked Schuler &amp; Shook about it, they are the    20 ones that asked us for the additional services.    21 So they are the ones that initiated it.    22 Q So then you had to go back to Paul and    23 say how do I handle this?    24 A Yes. I just asked him. I said they are</p>	<p style="text-align: right;">Page 89</p> <p>1 it wasn't me.    2 Q Can you tell me in August of 2002 what    3 work was being performed in the theatre area?    4 A I don't remember. I don't know if there    5 is anything going on at Stagg. I mean towards    6 that time I was more involved with Sandburg    7 because that was one of the last schools that    8 was being completed.    9 Q Am I correct then you don't recall    10 exactly what work was going on in August?    11 A That's a correct statement. I don't    12 recall.    13 Q If the contractors were in there, they    14 would have been doing the things that were    15 listed on the items that were enumerated that    16 needed to be completed in that area?    17 A Right. If they were there, they were    18 probably completing punch list items.    19 Q Can a punch list item -- am I correct    20 that some punch list items may take a few    21 minutes and some may take days to correct?    22 MR. BATTLE: Objection. That calls for    23 speculation.    24 MR. VELAZQUEZ: Join.</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1        THE WITNESS: I don't know. I mean, I'm 2 sure it depends on what it is. 3 BY MR. O'CONNOR: 4        Q I'm asking your experience. 5        A Typically, no. We have had punch lists 6 that have been out there for a year and they 7 haven't been done. If you say a few minutes, I 8 would say no. 9        Q What I'm getting at is they are not 10 something where somebody can necessarily come 11 back in one day and fix a few things and be 12 done -- 13        MR. BATTLE: Objection, calls for 14 speculation. 15        MR. O'CONNOR: Can I finish my question? 16        MR. BATTLE: Yes, you can. 17 BY MR. O'CONNOR: 18        Q It can take a period of time, correct? 19        MR. BATTLE: Objection. It calls for 20 speculation as to which punch list items you're 21 talking about. 22        MR. VELAZQUEZ: Join. 23        THE WITNESS: It depends. I don't know. 24 It depends on what it is, and it depends on how</p>	<p style="text-align: right;">Page 92</p> <p>1 of their normal field inspections? 2        A No. I believe -- what's the date on 3 this? This may have been in preparation for the 4 punch list. We would have -- if the contractor 5 told us that they are completed with the space 6 and we've got requests by Jacobs to come and do 7 our punch list, we would ask them to do their 8 punch list because that was part of their 9 contract to do the punch list in the performing 10 arts theatres. 11        Q And to provide the specific list of what 12 they felt needed to be completed? 13        A Okay, yes. 14        Q Under Number 11 it talks about steps in 15 the house are difficult to see. Due to carpet 16 pattern demarcation lines must be added on to 17 the steps to differentiate the change in 18 elevations. Do you see that? 19        A Yes, I do. 20        Q Do you know what that's referring to? 21        A I think it's the stairs that walk down 22 the aisles in the theatre. 23        Q Was there an issue about being able to 24 decipher the steps due to lighting and the color</p>
<p style="text-align: right;">Page 91</p> <p>1 long the list is. 2 BY MR. O'CONNOR: 3        Q You had a chance to -- did I show you 4 that document? I'm going to show you what I've 5 previously marked Fitzgerald Exhibit No. 1, and 6 it's dated May 12, 2002. It has your name on 7 it. 8        Do you recognize that document? 9        A I don't recall, but I'm sure if it's got 10 my name on it I must have gotten a copy of it. 11        Q This is a job site report done by 12 Schuler &amp; Shook. 13        A Okay. 14        Q Correct? 15        A Yes. 16        Q And they list 62 items, if I remember my 17 numbers correctly, some of which have 18 subsections to them that needed to be completed 19 in the theatre area. 20        A Okay. 21        Q Is that correct? 22        A Yes. 23        Q Do you know what caused them to generate 24 this particular document, or was this just one</p>	<p style="text-align: right;">Page 93</p> <p>1 of the stairs? 2        A According to this, yes. 3        Q It indicates -- under Section 30 it says 4 fluorescent work lights, fixture types SN, in 5 the orchestra pit must be installed. Do you 6 know what that is referring to? 7        A I guess the work lights in the orchestra 8 pit. 9        Q Were there general lights, work lights, 10 both types? 11        A I don't know. I mean, they designed the 12 lighting also for the pit. So I don't remember 13 if they were work lights or, you know, general 14 lights or what. 15        Q Because if -- was there times if you 16 turn on the lights you could make the orchestra 17 pit go dark? 18        A I believe so. 19        Q When you walked through did you rely on 20 Schuler &amp; Shook as to the lighting issues, 21 whether they were adequate, whether there was 22 sufficient lighting in the theatre area? 23        A Well, I relied on them to provide a 24 punch list depending on what they designed. I</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 94</p> <p>1 mean, if they designed -- I believe they also  2 provided the lighting design. So they were the  3 ones that would, you know, identify if a light  4 wasn't installed correctly or if it wasn't  5 installed at all.</p> <p>6 Q Are there times on projects where you  7 would go through and there is a lighting  8 installation pattern, and when it actually gets  9 installed you look back at it and the lighting  10 is not adequate or sufficient? Has that  11 happened to you on any project?</p> <p>12 A No.</p> <p>13 Q Generally that's -- on a project you or  14 someone at your company is creating the lighting  15 configuration?</p> <p>16 A We typically would get a lighting  17 designer, and they would run the calculations on  18 how much light is being provided by a certain  19 type of fixture or typically now the lighting  20 manufacturers all you do is you give them your  21 drawing file and they will tell you exactly if  22 you have the correct amount of light or not.</p> <p>23 Q Did you ever go through and walk through  24 the theatre area around this time to determine</p>	<p>1 needed to be in there if they are doing a punch  2 list or something like that. I wouldn't walk  3 through the theatre specifically just to get  4 from point A to point B.</p> <p>5 Q What I'm getting at is unless you're  6 looking for something on a punch list that's up  7 on the stage area itself, you wouldn't have  8 occasion to be up on the stage?</p> <p>9 A Correct.</p> <p>10 Q Do you recall when the last time before  11 August 19th of 2002 you would have been up on  12 that stage area itself?</p> <p>13 A I don't recall.</p> <p>14 Q Do you recall that there was temporary  15 railings put up by the construction people at  16 some point during the project, two by fours, to  17 block off the orchestra pit from the stage  18 area?</p> <p>19 A I don't remember that.</p> <p>20 Q Do you recall there being flower pots  21 put up along the area of the orchestra pit to  22 block off from the stage area?</p> <p>23 A No, I don't.</p> <p>24 Q Have you had a chance to look at</p>
<p style="text-align: right;">Page 95</p> <p>1 whether the lighting was adequate or not?</p> <p>2 A No. I wouldn't know what to look for  3 with the lighting because I didn't design it. I  4 mean, I relied on Schuler &amp; Shook to provide  5 that type of information on the punch list.</p> <p>6 Q As you walked through did any -- did you  7 have any lighting issues that stuck out in your  8 mind?</p> <p>9 A No. I mean, when we were walking  10 through I recall the lights being on, so I don't  11 know. I didn't see any, but then again I'm not  12 a theatre expert.</p> <p>13 Q Did you actually -- when you walked  14 through, would you walk up on to the stage near  15 the pit area?</p> <p>16 A Yes.</p> <p>17 Q Was that a regular part of your walk  18 that you would do?</p> <p>19 A What do you mean regular walk?</p> <p>20 Q When you're doing your walk-throughs and  21 you're going through on the project, would you  22 regularly walk up on the stage? Would you walk  23 down in front of it?</p> <p>24 A I would just be in the theatre if I</p>	<p>1 previously some of the photos of that?</p> <p>2 A I saw some photos at the last deposition  3 but I don't know -- I thought it was just some  4 two by fours or something.</p> <p>5 Q I'm showing you what was previously  6 marked Madden Exhibit No. 2 with a date of 12/11  7 of '03. Do you see that -- you recognize that  8 photo?</p> <p>9 A That's the theatre, yes.</p> <p>10 Q Do you recognize those two by fours and  11 the caution tape?</p> <p>12 A You know, I think I do, yeah. I recall  13 that -- I don't remember if it was at Stagg, but  14 I thought I recalled that they did do something  15 similar to that.</p> <p>16 Q At the other projects that you were on  17 did they do similar blocking off of the pit area  18 when they were working on this?</p> <p>19 A Well, that's what I don't remember if it  20 was over here or if it was at one of the  21 schools.</p> <p>22 Q That's what I'm asking you. At the  23 other schools did they normally block off the  24 pit area when they were working on the stage,</p>

25 (Pages 94 to 97)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 98</p> <p>1 the contractors?</p> <p>2 A I don't remember.</p> <p>3 Q Let me show you what's been previously 4 marked as Madden Exhibit No. 3 with a date of 5 12/11/03. Do you recognize that photo?</p> <p>6 A No, I don't.</p> <p>7 Q Do you recognize the wood at least in 8 the pit area or the wood shown in that picture 9 as what surrounded the pit area?</p> <p>10 A Yes. That's the trim that was put 11 around it.</p> <p>12 Q And was there any sort of lip between 13 the pit area and the stage area such before you 14 went off the stage area into the pit?</p> <p>15 A What do you mean a lip?</p> <p>16 Q Any sort of raised portion, a lip, or 17 was it just straight across?</p> <p>18 A No, I think it was just straight 19 across.</p> <p>20 Q I'm showing you flowers that I'll tell 21 you that have been described or placed along the 22 area between the stage and the pit area during 23 one of the ceremonies that were going on by the 24 school. You don't ever recall seeing that?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q And it was taller than you?</p> <p>2 A Yes, it was.</p> <p>3 Q If you put your hand up, was it even 4 taller than putting your hand up?</p> <p>5 A That, I don't recall.</p> <p>6 Q It was in excess of six feet?</p> <p>7 A I would say yes.</p> <p>8 Q Was it more or less than ten feet, if 9 you know?</p> <p>10 A I don't remember.</p> <p>11 Q Looking at Madden Exhibit No. 11, by 12 looking at the photograph can you tell what 13 stage of the construction or what time of year 14 that photo was taken?</p> <p>15 A I don't know. I mean, it looks like -- 16 well, they have got everything covered, so they 17 might have been cleaning it or in the final 18 stages of it.</p> <p>19 Q You would be guessing at that point?</p> <p>20 A Yeah, I would be guessing.</p> <p>21 Q At least you know it was the stage of 22 construction where they had put in the chairs, 23 correct?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 A No, I don't.</p> <p>2 Q Was there any -- strike that. 3 In order to put in the pit cover, 4 there wasn't any structural change that needed 5 to be made to the original pit itself or the 6 area around it, am I correct?</p> <p>7 A Well, I don't believe anything 8 structural. I think what they ended up having 9 to do is just take some of the trim off to be 10 able to install the filler, and then there was 11 some sort of a support that was put around the 12 entire perimeter for the pit filler to sit on.</p> <p>13 Q That support would go somewhere on the 14 bottom of the trim or the middle of the trim 15 somewhere along to hold it up?</p> <p>16 A I don't remember exactly where. I mean, 17 it was somewhere -- I think they maybe had to 18 modify the trim to be able to put that filler 19 in.</p> <p>20 Q The distance from the top of the theatre 21 to the bottom of the pit, how high was it?</p> <p>22 A I don't remember the actual height.</p> <p>23 Q Were you down in the pit area?</p> <p>24 A Yes, I was.</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. VELAZQUEZ: Objection. He said that 2 it could be either cleaning or towards the 3 end.</p> <p>4 THE WITNESS: I mean, they had 5 everything covered up. They could have been 6 cleaning it.</p> <p>7 BY MR. O'CONNOR:</p> <p>8 Q You described for me some of the people 9 that you had contact with as you were on the 10 project. Did you ever have contact with any of 11 the building engineers or building custodians?</p> <p>12 A No, I didn't.</p> <p>13 Q You don't know Mr. Madden?</p> <p>14 A No, I don't.</p> <p>15 Q If he walked in the door, you wouldn't 16 recognize him?</p> <p>17 A No, I wouldn't.</p> <p>18 Q Were there occasions where you had to 19 have -- get access to certain portions of the 20 building or get information about certain 21 portions of the building from the building 22 itself -- the school itself?</p> <p>23 A There may have been, but if I did I 24 would just speak to the principal or whoever was</p>

26 (Pages 98 to 101)

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<p>1 the contact person.</p> <p>2 Q Do you remember who that was?</p> <p>3 A No, I don't.</p> <p>4 Q So your conversations with that person</p> <p>5 would have been very limited?</p> <p>6 A Yes.</p> <p>7 Q Who else as you were on this project did</p> <p>8 you have contact with other than the people that</p> <p>9 you've named so far for me that you can</p> <p>10 recall?</p> <p>11 A From Jacobs it would have been John</p> <p>12 Szott I think his name was and then --</p> <p>13 Q What was his position?</p> <p>14 A I think he dealt more with the contract</p> <p>15 side of the project, you know, and possibly some</p> <p>16 scheduling. I think Ken was the project</p> <p>17 manager, Ken Ruckus or something like that. I</p> <p>18 mean, I guess from Jacobs' side that was really</p> <p>19 it.</p> <p>20 Q Did you deal with anyone from Paschen's</p> <p>21 side?</p> <p>22 A Matt mainly, Matt Moss.</p> <p>23 Q How often would you discuss things with</p> <p>24 him when you were on the project?</p>	Page 102	<p>1 appear to have any specialized knowledge in the</p> <p>2 area of theatre or how to design?</p> <p>3 A No, I don't recall.</p> <p>4 Q Am I correct that the school was relying</p> <p>5 on VOA to provide their consultation on the</p> <p>6 theatre and then VOA in turn was relying on</p> <p>7 Schuler &amp; Shook?</p> <p>8 A Yes.</p> <p>9 Q If Schuler &amp; Shook would have</p> <p>10 recommended to VOA to put in the pit cover for</p> <p>11 safety reasons, would you have passed that</p> <p>12 information along to the school?</p> <p>13 A If they said something to us, sure.</p> <p>14 Q If there was a safety issue concerning</p> <p>15 having a pit cover or not having a pit cover,</p> <p>16 would you have expected Schuler &amp; Shook to bring</p> <p>17 that to your attention?</p> <p>18 A Well, I would expect that they would</p> <p>19 have provided us a design that met code. I</p> <p>20 mean, whether it's safe or not, I don't know.</p> <p>21 We contracted them for us to get a design from</p> <p>22 them that met the code, and that's what we would</p> <p>23 have expected from them.</p> <p>24 Q Am I correct that what you're telling me</p>	Page 104
<p>1 A Not too often. I think more so when --</p> <p>2 from what I recall, Matt was left on the project</p> <p>3 to kind of finish up the punch list items and,</p> <p>4 you know, as the project was slowing down they</p> <p>5 kind of kept him as the contact guy from</p> <p>6 Paschen. So sometimes, you know, if he had</p> <p>7 questions, we would walk the building together.</p> <p>8 If he had questions on the punch list, you know,</p> <p>9 about a certain item that he may have not</p> <p>10 understood, he would contact me or I would meet</p> <p>11 with him, but that was basically about it.</p> <p>12 Q So sometimes you would discuss issues</p> <p>13 concerning the punch list items with Matt Moss</p> <p>14 directly. Sometimes it would go through</p> <p>15 Jacobs?</p> <p>16 A Yes.</p> <p>17 Q Was that mainly the person you dealt</p> <p>18 with from Paschen?</p> <p>19 A Yes.</p> <p>20 Q Was there anybody else?</p> <p>21 A I don't recall. I mean, he is the one I</p> <p>22 remember most because I probably had the most</p> <p>23 dealings with him.</p> <p>24 Q Did the school officials you dealt with</p>	Page 103	<p>1 is that as long as your design meets code there</p> <p>2 is no concern on the part of VOA about safety?</p> <p>3 A Correct.</p> <p>4 Q Do you understand the code provisions to</p> <p>5 be the minimum requirements that you need to</p> <p>6 follow in order to meet the guidelines of that</p> <p>7 particular agency?</p> <p>8 A Yes.</p> <p>9 Q Was it ever -- strike that.</p> <p>10 You wouldn't know what the school</p> <p>11 district asked in terms of the level of</p> <p>12 compliance with those codes that they wanted in</p> <p>13 the beginning because you weren't involved with</p> <p>14 that --</p> <p>15 A Right, I wasn't around.</p> <p>16 Q Back to Fitzgerald No. 1 in terms of the</p> <p>17 62 items listed in this job report. Would you</p> <p>18 know the time it would take to complete all of</p> <p>19 these items?</p> <p>20 A No, I wouldn't know.</p> <p>21 Q Do you know when the punch list items in</p> <p>22 the theatre area were actually completed?</p> <p>23 A No, I don't.</p> <p>24 Q Because you left by that time?</p>	Page 105

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p style="text-align: right;">Page 106</p> <p>1 A Yeah. I mean, we did whatever we could 2 up to a certain point, and then when the owner 3 told us he wasn't going to pay us anymore money 4 and our contract ran out, that was when we 5 stopped.</p> <p>6 Q I just want to make it clear that as of 7 December of 2002 when you left, the punch list 8 items were not completed in the theatre area by 9 that time?</p> <p>10 A I don't remember. I don't remember if 11 they were or not.</p> <p>12 Q You remember that the punch list items 13 for the entire project wasn't completed by that 14 time?</p> <p>15 A Yeah. I mean, I believe there were 16 areas that there were still items that were 17 outstanding. As an example like some of the 18 schools that were completed later, you know, we 19 issued punch lists, and then Jacobs was trying 20 to get all the contractors back to complete 21 them, but I know that they weren't completed by 22 the time we left the job.</p> <p>23 Q In December of '02?</p> <p>24 A Right.</p>	<p style="text-align: right;">Page 108</p> <p>1 A Yes. 2 Q I just want to ask you a few questions 3 about it. 4 Have you issued certificates of 5 substantial completion other than for this 6 project? 7 A Yes, I have. 8 Q And what is the indication to you that 9 that means when you issue a certificate of 10 substantial completion? 11 A Basically that the work has been 12 completed up to a certain point to abide by the 13 contract documents and there is punch list items 14 still remaining but that the work has been 15 completed at that point for the owner to use it 16 as it was intended to be used. 17 Q And this certificate, does it indicate 18 that the work has been completed pursuant to 19 VOA's architect drawings? 20 A Yes. 21 Q And once you, you meaning VOA, signed 22 this document, at that point that area is 23 substantially complete. Is that a fair 24 statement?</p>
<p style="text-align: right;">Page 107</p> <p>1 Q But you don't recall whether there was 2 any still left in the area of the theatre? 3 A That, I don't remember. 4 Q Is there any point in time where you can 5 tell me that you recall there being work still 6 being done in the theatre area? In other words, 7 November, October, September -- 8 A I don't remember. 9 MR. O'CONNOR: Okay. That's all that I 10 have. 11 MR. BATTLE: Can you mark this as Migon 12 Exhibit 3. 13 (Whereupon, Migon Exhibit 14 No. 3 was marked for 15 identification.) 16 MR. O'CONNOR: For the record, Migon 17 Exhibit No. 3 is identical to Fitzgerald Exhibit 18 No. 2. 19 MR. BATTLE: I believe so. 20 E X A M I N A T I O N 21 BY MR. BATTLE: 22 Q You've seen this certificate of 23 substantial completion before; is that 24 correct?</p>	<p style="text-align: right;">Page 109</p> <p>1 A Yes. 2 Q Is that your signature that appears on 3 that statement? 4 A Yes, it is. 5 Q Can you tell me the date on that 6 statement? 7 A It says 5/21/02. 8 Q As of May 21, 2002, would you agree with 9 me that this -- these areas listed here were 10 substantially completed? 11 A Yes. 12 MR. O'CONNOR: I object. As it relates 13 to VOA? 14 THE WITNESS: Yes. 15 BY MR. BATTLE: 16 Q Now, when you issue a certificate of 17 substantial completion, it can apply to several 18 different areas at one given time because 19 construction is ongoing in numerous areas; is 20 that right? 21 A Yes. 22 Q So this being issued applies to the 23 theatre, plus some other rooms within the actual 24 school?</p>

28 (Pages 106 to 109)

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<p style="text-align: right;">Page 110</p> <p>1 A That's correct.  2 Q And those rooms are enumerated here.  3 There are a number of them, correct?  4 A Yes.  5 Q Now, to your knowledge does anyone else  6 besides the architect issue a certificate of  7 substantial completion?  8 A No.  9 Q And once this certificate is issued, is  10 that particular area or section turned back over  11 to the owner?  12 A That's correct.  13 Q You mentioned that in August of 2002  14 there wasn't much construction going on at Stagg  15 and you were over at Sandburg working?  16 A Yes.  17 Q Do you remember anything going on in the  18 theatre at that time?  19 A I don't remember.  20 MR. BATTLE: Thank you, sir. That's all  21 that I have.</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>22 BY MR. VELAZQUEZ:  23 Q With respect to the certificate of</p>	<p>1 as they wished?  2 A Yes.  3 Q Did you ever see -- did you ever see  4 people -- employees of the District that worked  5 in the building at Stagg High School?  6 A Yes.  7 Q Did they have a uniform or something  8 that differentiated them from other people on  9 the project?  10 A I mean, I don't remember -- when you say  11 employees, I mean, I worked more with the  12 administrative staff. Those were the people I  13 am referring to, so I don't recall them wearing  14 any uniform.  15 Q What about the maintenance personnel or  16 the engineers?  17 A I don't remember if they wore one or  18 not.  19 Q Now, within the three months between the  20 date of substantial completion and the date of  21 Mr. Madden's accident, would the school have had  22 an opportunity to erect barricades if they  23 wanted?  24 A Sure.</p>
<p style="text-align: right;">Page 111</p> <p>1 substantial completion, Exhibit 3, the date of  2 the architect -- the date of the architect's  3 signature is the date that governs the date of  4 turnover to the owner?  5 A That's my understanding.  6 Q And that would be regardless of what  7 other date any of the other entities on the  8 certificate signed the certificate?  9 A Yes.  10 Q Do you know when Mr. Madden's accident  11 occurred?  12 A No, I don't.  13 Q If you were to assume that the accident  14 occurred in August of 2002, how many months or  15 how much time between the date of substantial  16 completion and turnover and the date of the  17 accident did the District have possession of the  18 performing arts theatre?  19 A If May 21st was the substantial -- you  20 are saying in August?  21 Q Yes.  22 A About three months more or less.  23 Q And in those three months the District  24 could have accessed the performing arts theatre</p>	<p style="text-align: right;">Page 113</p> <p>1 Q And then also they could have put up  2 warning signs?  3 A I would agree with that.  4 Q Or planters?  5 A Sure.  6 Q And that would have been anywhere in the  7 performing arts theatre?  8 A Yes.  9 Q Even on the edge of the stage near the  10 edge into the orchestra pit?  11 A Yes.  12 Q Now, once there is substantial  13 completion granted, no entity has possession of  14 the area anymore?  15 A Basically it's turned over to the owner.  16 That's my understanding.  17 Q So Jacobs would not have been in  18 possession of the performing arts theatre after  19 the date of substantial completion?  20 A Right.  21 Q And the date was May 21, 2002?  22 A Right.  23 Q Being that the owner was now in  24 possession after May 21, 2002, they could have</p>

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 hosted a school function if they wanted to?</p> <p>2 A Yes, that's correct.</p> <p>3 Q And do you know if they did?</p> <p>4 A I was made aware that they did, but</p> <p>5 prior to the last deposition I wasn't even aware</p> <p>6 of that.</p> <p>7 Q It was at the prior Regalado deposition</p> <p>8 that you became aware?</p> <p>9 A Yes.</p> <p>10 Q And with respect to that function, if</p> <p>11 they wanted to, the District could have put up</p> <p>12 ropes around the edge of the orchestra pit?</p> <p>13 A They could have, yes.</p> <p>14 Q Now, the possession of the owner after</p> <p>15 substantial completion, that's exclusive of</p> <p>16 possession from the architect, from the</p> <p>17 construction manager, and from any other</p> <p>18 contractors?</p> <p>19 A Can you rephrase it?</p> <p>20 Q Well, exclusive in that the architect,</p> <p>21 the construction manager, and the contractors</p> <p>22 don't have possession over that area anymore?</p> <p>23 A That's correct.</p> <p>24 Q I know that you said something about</p>	<p style="text-align: right;">Page 116</p> <p>1 portion of the performing arts theatre facing</p> <p>2 the stage, facing the stage from the audience</p> <p>3 perspective at the end of the stage. Had you</p> <p>4 ever been on the stage at that point, the rear</p> <p>5 of the stage from the viewer's perspective?</p> <p>6 A Yes. On the stage or --</p> <p>7 Q Yeah, on the stage.</p> <p>8 A I guess I'm not sure what you mean.</p> <p>9 Q Okay.</p> <p>10 Say for example there is the front</p> <p>11 and the back, with the front being the edge of</p> <p>12 the stage that is adjacent to the orchestra pit</p> <p>13 and the back of the stage being the area where,</p> <p>14 you know, maybe there is props or, you know, the</p> <p>15 area behind the curtains, that sort of thing.</p> <p>16 Did you have occasion to be on stage towards the</p> <p>17 back of the stage?</p> <p>18 A Yes, I have.</p> <p>19 Q And did you ever have occasion to walk</p> <p>20 from the back of the stage area towards the</p> <p>21 front of the stage?</p> <p>22 A Yes.</p> <p>23 Q When you were doing that, were you</p> <p>24 walking in the performing arts theatre with the</p>
<p style="text-align: right;">Page 115</p> <p>1 having to come back periodically, but you</p> <p>2 weren't too sure about how often you were at the</p> <p>3 project at Stagg around August of 2002. After</p> <p>4 May 21, 2002, did you have occasion to go back</p> <p>5 to Stagg?</p> <p>6 A The only reason would be if a contractor</p> <p>7 said that they were done with a punch list. We</p> <p>8 would get something from Jacobs asking for us to</p> <p>9 reinspect the area so we can sign off on it, but</p> <p>10 that would be really the only reason to</p> <p>11 follow-up on punch list items.</p> <p>12 Q So is it fair to say that after May 21st</p> <p>13 and following up with punch list items, you did</p> <p>14 go back to Stagg?</p> <p>15 A Yes, on occasion.</p> <p>16 Q During any of those times after</p> <p>17 May 21st did you have occasion to go to the</p> <p>18 stage area?</p> <p>19 A Yeah, I believe I did.</p> <p>20 Q Do you know if you were on the stage</p> <p>21 area before August of 2002?</p> <p>22 A I would have to say yes.</p> <p>23 Q When you were on the stage area were you</p> <p>24 ever -- say you are sitting from the audience</p>	<p style="text-align: right;">Page 117</p> <p>1 lights on or off?</p> <p>2 A They were on.</p> <p>3 Q When the lights were on, were you able</p> <p>4 to discern where the stage ended and where the</p> <p>5 orchestra pit began?</p> <p>6 A Yes. I mean, there was that line of</p> <p>7 trim that was a lighter color that kind of</p> <p>8 demarcated the end of the floor.</p> <p>9 Q And then aside from the lighter color or</p> <p>10 the trim, was it just obvious that it was</p> <p>11 open?</p> <p>12 A Yes.</p> <p>13 Q And do you know how deep the stage was</p> <p>14 from the front to back?</p> <p>15 A I don't recall.</p> <p>16 Q Would you say it was 50 feet deep or</p> <p>17 shorter?</p> <p>18 A I think it was probably shorter than</p> <p>19 that.</p> <p>20 Q Would you say 40 feet?</p> <p>21 A Maybe around there.</p> <p>22 Q At what point walking towards the stage</p> <p>23 can you -- do you realize or did you realize</p> <p>24 that there is the pit that is adjacent to the</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 front of the stage?</p> <p>2 MR. O'CONNOR: I just object. I think</p> <p>3 he knew it the whole time. He designed it.</p> <p>4 MR. VELAZQUEZ: Okay. So bad</p> <p>5 question.</p> <p>6 BY MR. VELAZQUEZ:</p> <p>7 Q At what point from walking from the back</p> <p>8 of the stage towards the front can you see or</p> <p>9 recognize that the stage ends and the pit</p> <p>10 begins?</p> <p>11 A I mean, that's kind of a hard thing to</p> <p>12 answer.</p> <p>13 Q Can you see it from the back of the</p> <p>14 stage?</p> <p>15 A You can certainly see the trim, but I</p> <p>16 don't know. I mean, I would have to be standing</p> <p>17 there to respond to that question.</p> <p>18 Q Okay.</p> <p>19 Is it at some point before you reach</p> <p>20 the front of the stage?</p> <p>21 A Yes, yes.</p> <p>22 Q Is it before you reach the midway point</p> <p>23 between front -- between back and front walking</p> <p>24 from back to front?</p>	<p style="text-align: right;">Page 120</p> <p>1 Stagg or if it was at one of the other schools,</p> <p>2 but I do recall that there was something</p> <p>3 there.</p> <p>4 Q And do you recall if that was before --</p> <p>5 I guess first off, you're not sure if it was</p> <p>6 Stagg High School?</p> <p>7 A You're right. I'm not sure if it was</p> <p>8 Stagg.</p> <p>9 Q And then with respect to the time frame</p> <p>10 that you saw it, regardless of whether it was</p> <p>11 Stagg, do you recall if you saw the caution tape</p> <p>12 before or after May 21, 2002?</p> <p>13 MR. O'CONNOR: Objection, asked and</p> <p>14 answered. You already asked him that, and he</p> <p>15 said it was after. That was your last</p> <p>16 question.</p> <p>17 MR. VELAZQUEZ: No, he just said that he</p> <p>18 recalled seeing them.</p> <p>19 THE WITNESS: I recall it was after the</p> <p>20 21st, after the substantial completion.</p> <p>21 BY MR. VELAZQUEZ:</p> <p>22 Q Now, after May 21, 2002, when you went</p> <p>23 back to the stage area, did you ever have</p> <p>24 occasion to tell the owner you should erect</p>
<p style="text-align: right;">Page 119</p> <p>1 A I am sure somewhere at the mid point you</p> <p>2 will be able to see it because you have a piece</p> <p>3 of wood that's a light color at the front of the</p> <p>4 stage that kind of demarcates the end of the</p> <p>5 stage. So, you know, I guess I am -- unless you</p> <p>6 can't see the color. That would be the only way</p> <p>7 that you wouldn't know.</p> <p>8 Q So then at least in approximation you</p> <p>9 could recognize that the stage ends and that the</p> <p>10 orchestra pit begins when you're about 20 feet</p> <p>11 away from the edge of the stage, front of the</p> <p>12 stage?</p> <p>13 A You can discern that the stage ends -- I</p> <p>14 don't know exactly how many feet, but you can</p> <p>15 discern that the stage ends if you are walking</p> <p>16 from the back to the front.</p> <p>17 Q When you went back to the stage area</p> <p>18 after May 21, 2002, did you ever at any point</p> <p>19 see any signs erected?</p> <p>20 A Like I said, I recall that there was,</p> <p>21 you know, some of that caution tape that was put</p> <p>22 on there, the yellow tape, and that there was</p> <p>23 some sort of posts that were put up along the</p> <p>24 front of it. I don't remember if it was at</p>	<p style="text-align: right;">Page 121</p> <p>1 signs or barricades or anything like that?</p> <p>2 A No. I mean, I wouldn't -- that wouldn't</p> <p>3 be for me to do.</p> <p>4 Q Would that be because it's up to the</p> <p>5 school to decide what to do with the stage</p> <p>6 area?</p> <p>7 A Well, at that time it's already -- they</p> <p>8 are the ones using the building. So, I mean,</p> <p>9 they would know what's best for their own use.</p> <p>10 Q Now, after May 21, 2002 when the stage</p> <p>11 area was substantially completed and turned</p> <p>12 over, if there was a light bulb that would have</p> <p>13 burnt out, would that have been something that</p> <p>14 the owner as possessor would have addressed?</p> <p>15 A Yeah, that would be up to them to do.</p> <p>16 Q What about maybe squeaky doors in the</p> <p>17 performing arts theatre?</p> <p>18 A I mean, I guess that's -- it depends on</p> <p>19 the circumstances. There is obviously warranty</p> <p>20 items that if something breaks you have a</p> <p>21 certain warranty period in which the contractor</p> <p>22 is responsible to fix it. The squeaky door,</p> <p>23 that just may be their janitor spraying WD40 on</p> <p>24 the hinge or something like that. A scenario</p>

31 (Pages 118 to 121)

<p>Page 122</p> <p>1 like that I would say that that's part of the 2 District's responsibility.</p> <p>3 Q Did you ever see after May 21, 2002 4 employees of the District in the performing arts 5 theatre area?</p> <p>6 A I don't recall.</p> <p>7 Q As far as Jacobs is concerned, Jacobs 8 didn't have any duties related to design for the 9 project entirely?</p> <p>10 A Right, they didn't have any 11 responsibility.</p> <p>12 Q And Jacobs didn't -- Jacobs wasn't 13 present to do physical work on the District 230 14 project?</p> <p>15 A Yeah, that was my understanding. They 16 were just there for supervision.</p> <p>17 Q Jacobs didn't hire electricians?</p> <p>18 A No.</p> <p>19 Q Or sheet metal workers?</p> <p>20 A No.</p> <p>21 Q Now, with respect to the fire chief's 22 letter, do you know what, if any, jurisdiction 23 the fire chief has to make -- to send letters?</p> <p>24 A I'm not sure.</p>	<p>Page 124</p> <p>1 the process for the occupancy permit?</p> <p>2 A Well, I mean, just seeing what 3 transpired, yes, but I didn't know prior to this 4 that that's what it was. I've been on other 5 projects where they are not required to 6 walk-through, but every jurisdiction or region 7 is a little bit different.</p> <p>8 Q So would you defer to an employee of the 9 entity that issues the occupancy permit to 10 explain what the process is?</p> <p>11 A Yes, that's fair to say.</p> <p>12 Q With respect to that letter, you stated 13 that you had never seen it before?</p> <p>14 A Right.</p> <p>15 Q As far as the performing arts theatre is 16 concerned and as far as you know, everything 17 that was designed -- was designed according to 18 code?</p> <p>19 A Yes, as far as I know.</p> <p>20 Q So nothing was substandard or in 21 violation of the code?</p> <p>22 A Right, correct.</p> <p>23 Q Do you know offhand what code it was?</p> <p>24 A I don't know.</p>
<p>Page 123</p> <p>1 Q So you're not sure if he is sending a 2 letter based on a fire code?</p> <p>3 A No, I'm not. I mean, you know, I guess 4 my understanding was that they had to go through 5 him to get the occupancy certificate, so that 6 was the only understanding that I had of it.</p> <p>7 Q When was that your understanding that -- 8 when was that your understanding that the fire 9 chief was involved for purposes of an occupancy 10 permit?</p> <p>11 A Basically they had told us to, you know, 12 do our punch list but that the District would 13 have to call the fire chief or someone in the 14 fire department to walk through the building or 15 the area before they could actually let students 16 in it.</p> <p>17 Q And do you know who actually issues the 18 occupancy permit?</p> <p>19 A I assume it's the fire department. I 20 don't know.</p> <p>21 Q That's okay.</p> <p>22 A And if it's not the fire department 23 that issues the occupancy permit, do you know 24 for certain that the fire department is part of</p>	<p>Page 125</p> <p>1 Q Now, do you know whether or not the 2 items listed on that letter were just 3 recommendations that were being made by the fire 4 chief?</p> <p>5 A I don't know. I mean, you know, they 6 were addressed to Jacobs, and I think Jacobs was 7 the one who walked through the building with 8 us.</p> <p>9 Q So you can't say whether those items 10 were listed because the fire chief thought he 11 should recommend the change or because the items 12 were necessary in order to comply with some 13 code?</p> <p>14 A I mean, I don't know if they were 15 necessary to comply with a code. I mean, if the 16 intent on that letter was to issue an occupancy 17 permit, the items he probably listed were to, 18 you know, satisfy him to get that permit in 19 place. So that's kind of my understanding of 20 it.</p> <p>21 Q But you're not sure what authority he 22 has then?</p> <p>23 A No, I don't.</p> <p>24 Q Now, with respect to the items listed on</p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 the letter, the decision to oblige the fire    2 chief, that would have been made by the owner?    3 A When you say oblige the fire chief --    4 Q Well, for example, comply. The decision    5 to comply with -- the decision to comply with    6 the fire chief's items listed on that letter,    7 which is labeled Moss No. 5 in the Madden case,    8 the decision for compliance with those items    9 would have been made by the District?    10 A I mean, the letter is addressed to    11 Gerry, so I think Gerry was the contact person    12 with the fire department here. So, I mean, I    13 assume since Gerry was the superintendent, he    14 would be the one, you know, making sure these    15 items get completed.    16 Q And the thing is though if those items    17 go beyond the scope of the project documents,    18 Jacobs doesn't have any authority to modify the    19 project documents and fulfill these items?    20 A I mean, I guess, you know, if it went    21 above and beyond what was on the drawings then,    22 yes, you know, basically they would tell -- I    23 would think they would tell the owner that, hey,    24 you know, these are above and beyond and we've   </p>	<p style="text-align: right;">Page 128</p> <p>1 taking into account was cost?    2 A Yeah. I mean, it's typical on any    3 project.    4 MR. BARAKAT: And I would continue to    5 object as to speculation as to what the District    6 was taking into account in this particular    7 witness's knowledge.    8 MR. VELAZQUEZ: I think he testified    9 earlier that the District was budget    10 conscious.    11 BY MR. VELAZQUEZ:    12 Q With respect to the meetings that    13 everybody was involved with that I think you    14 referred to as being held by Jacobs, the purpose    15 of those meetings wasn't safety specifically?    16 A Yeah, from what I recall we kind of went    17 through open items, issues that may have been    18 involved. I mean, I think they may have had    19 some portion of the meeting that addressed    20 something on safety.    21 Q The primary purpose was to discuss the    22 progress of the project?    23 A Yes.    24 Q Now, with respect to the specifics for   </p>
<p style="text-align: right;">Page 127</p> <p>1 got to do this in order to comply, what do you    2 want us to do, do you want us to spend the money    3 and do them.    4 Q Sorry. Are you finished?    5 A I was just going to say there could have    6 been additional items that the fire chief saw at    7 the time of his walk-through that may not have    8 been, quote, an issue but it may have been    9 something to resolve his concerns.    10 Q And do you know if any of those items    11 were above and beyond the contract documents?    12 A I don't know.    13 Q Now, as far as the pit cover is    14 concerned, it's the owner that would have made    15 the decision whether or not to install the pit    16 cover?    17 A Yes.    18 Q And that's for a number of reasons, one    19 being budget concerns you said earlier, I    20 think?    21 A I don't know if I said that.    22 MR. BARAKAT: Objection, speculation.    23 BY MR. VELAZQUEZ:    24 Q One of the things that the District was   </p>	<p style="text-align: right;">Page 129</p> <p>1 the pit filler which I think --    2 MR. O'CONNOR: Right here.    3 THE WITNESS: The specifications you    4 said?    5 BY MR. VELAZQUEZ:    6 Q Yes, I think they are the specs for the    7 pit filler.    8 A I think this is the field report.    9 Q This is the one. This document is Moss    10 No. 9.    11 Now, are those the specifications    12 for the actual filler that was installed?    13 A I believe so.    14 Q And the date on that document is    15 April 17, 2002?    16 A Yes.    17 Q Do you know if -- well, at the point    18 that the District requested VOA to inquire into    19 the possibility for a pit cover, at that point    20 does it become an addendum to the contract    21 documents?    22 A Addendum to the contract documents?    23 Q In other words, is an inquiry -- does an    24 inquiry make the pit filler part of the   </p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 130</p> <p>1 contract?</p> <p>2 A I mean, at that point it's not an 3 addendum. An addendum is typically issued 4 before the contract is awarded. What it becomes 5 is a modification to the contract.</p> <p>6 Q And do you know if this became a 7 modification to the contract as of the 8 April 17th date or is the April 17th date just a 9 day that the specs were submitted to VOA and the 10 owner for the purpose of consideration -- was 11 considering possibilities for pit covers?</p> <p>12 A This was just when they had prepared the 13 documents for us to give to the owner.</p> <p>14 Q So the pit cover which -- which from 15 what I gather from earlier testimony it was 16 eventually installed?</p> <p>17 A Yes, it was.</p> <p>18 Q Do you know at what point the 19 specifications for the pit filler became an 20 addendum to the contract documents?</p> <p>21 A I mean, I don't know. Basically we 22 issued them, you know, on this date. We had -- 23 our contract was with Schuler &amp; Shook, so they 24 had sent us a proposal, and we would have signed</p>	<p style="text-align: right;">Page 132</p> <p>1 A I don't know off the top of my head, 2 no.</p> <p>3 Q Do you know if -- at the point that this 4 is prepared and submitted, there is still not a 5 decision or -- strike that.</p> <p>6 At the time that this was prepared, 7 the pit filler was still not a formal part of 8 the contract, correct?</p> <p>9 MR. O'CONNOR: I object. I don't know 10 what you mean by that.</p> <p>11 MR. VELAZQUEZ: Let me rephrase it. I'm 12 trying to think of the best way to ask this.</p> <p>13 BY MR. VELAZQUEZ:</p> <p>14 Q When the District makes a request for an 15 inquiry, requests VOA to look into possibilities 16 for whatever, X, VOA or anybody else that's 17 working with VOA looks into those possibilities. 18 They come up with a possibility and state this 19 is what we think could work. They state that to 20 the owner. Just because the owner has requested 21 and VOA or whatever architect would be working 22 for whatever owner -- just because an architect 23 proposes a possible solution to the owner's 24 inquiry, it doesn't make the potential solution</p>
<p style="text-align: right;">Page 131</p> <p>1 it and sent it back to them saying they are 2 going to get paid for the additional work.</p> <p>3 Q Is that additional work in terms of the 4 additional work of investigating it, of looking 5 into the possibilities, or additional work for 6 overseeing the actual installation?</p> <p>7 A No, what it was --</p> <p>8 MR. BARAKAT: At this point I'm going to 9 object. He already testified earlier that the 10 additional work that Schuler &amp; Shook was paid 11 for was to create the specification and do the 12 walk-through at the end after it was installed.</p> <p>13 You can answer, if you know.</p> <p>14 THE WITNESS: Basically that's what they 15 were paid for was to come up with the 16 specification, the layout drawing, and they 17 would look at the shop drawings when they came 18 in; and then after the pit fillers were 19 installed, they would go and take a look at the 20 installation and provide a punch list if 21 required.</p> <p>22 BY MR. VELAZQUEZ:</p> <p>23 Q Do you know what the date of that 24 proposal was?</p>	<p style="text-align: right;">Page 133</p> <p>1 part of the actual contract documents?</p> <p>2 A Right, right. I mean, you know, the 3 proposal that was given to the owner basically 4 identified that this is what they are going to 5 do. This is above and beyond what we were 6 contracted for and this is what it's going to 7 cost you for Schuler &amp; Shook to complete the 8 work.</p> <p>9 Q So would it be fair to say that the 10 specifications for the pit filler became a 11 formal part of the contract documents after that 12 April 17, 2002 date?</p> <p>13 A I mean, I guess I would say yes.</p> <p>14 Q And do you know one way or the other -- 15 if you don't know, that's okay. Do you know who 16 it became formal -- whether or not the pit 17 filler specifications became formal or 18 formalized for the contract documents before or 19 after May 21, 2002, the date of substantial 20 completion?</p> <p>21 A I don't know. I mean, you know, if 22 something came out of our office to the owner 23 that said sign this for us to continue, I'm not 24 aware of it. So I don't know the answer to</p>

34 (Pages 130 to 133)

<p>1 that.</p> <p>2 Q The installation of the actual pit</p> <p>3 cover, do you know if that was something that</p> <p>4 the owner took upon themselves separately or was</p> <p>5 that also through the actual project?</p> <p>6 A My understanding was that it wasn't</p> <p>7 through the project, that it was separate.</p> <p>8 Because one of their concerns was there could</p> <p>9 have been a potential markup on each of the pit</p> <p>10 fillers for each school. So typically, you</p> <p>11 know, when you ask the general contractor to</p> <p>12 provide something, he is going to go to some</p> <p>13 sort of installer who is going to provide a</p> <p>14 markup to him. The general is going to provide</p> <p>15 a markup on top of that. The owner is getting a</p> <p>16 markup twice.</p> <p>17 One of the options was the school</p> <p>18 could go directly to one of these manufacturers</p> <p>19 and take care of it that way. So, you know, I</p> <p>20 guess looking at it that way did it ever become</p> <p>21 a formal part of the project? I don't know, but</p> <p>22 I was under the impression that the owner went</p> <p>23 directly to the manufacturer and left everybody</p> <p>24 out of it to go ahead and have these pit fillers</p>	<p>Page 134</p> <p>1 A Yes, I am aware of that.</p> <p>2 Q And VOA paid Schuler &amp; Shook for their</p> <p>3 services?</p> <p>4 A Yes.</p> <p>5 Q Do you know if VOA used any other</p> <p>6 consultants prior to Schuler &amp; Shook on the</p> <p>7 project?</p> <p>8 A I don't know.</p> <p>9 Q You testified earlier that the school</p> <p>10 relied on VOA for the theatre and VOA relied on</p> <p>11 Schuler &amp; Shook for their services?</p> <p>12 A Yes.</p> <p>13 Q Are you aware of any work done by</p> <p>14 Schuler &amp; Shook directly with or for the school</p> <p>15 district that VOA was not involved with?</p> <p>16 A No, I don't.</p> <p>17 Q Do you know of any work by Schuler &amp;</p> <p>18 Shook related to the theatre for anyone else</p> <p>19 other than VOA?</p> <p>20 A No, I don't.</p> <p>21 Q So it's safe to say that as VOA's</p> <p>22 Consultant that all Schuler &amp; Shook's work with</p> <p>23 respect to Stagg was part of VOA's contract?</p> <p>24 A Yes.</p>
<p>1 purchased and installed.</p> <p>2 Q So then is it your understanding that</p> <p>3 the owner dealt directly with the contractor and</p> <p>4 the contract with that contractor was not part</p> <p>5 of the contracts which VOA, Jacobs Facilities,</p> <p>6 and Paschen had with respect to District 230?</p> <p>7 A That was my understanding, but I haven't</p> <p>8 looked at the contract, so I don't know.</p> <p>9 MR. VELAZQUEZ: That's all that I have</p> <p>10 for now.</p> <p>11 E X A M I N A T I O N</p> <p>12 BY MR. HUTCHINSON:</p> <p>13 Q Hi, Mr. Migan. My name is Andy</p> <p>14 Hutchinson. I represent Schuler &amp; Shook.</p> <p>15 I understand you said you haven't</p> <p>16 seen any contracts related to the jobs. I take</p> <p>17 it that includes VOA's contract with Schuler &amp;</p> <p>18 Shook?</p> <p>19 A Yeah, I didn't.</p> <p>20 Q Do you know who at VOA was responsible</p> <p>21 for contracting with Schuler &amp; Shook?</p> <p>22 A I'm not sure.</p> <p>23 Q But you're aware that Schuler &amp; Shook</p> <p>24 was a consultant to VOA?</p>	<p>Page 135</p> <p>1 Q VOA was not responsible for safety on</p> <p>2 the job site?</p> <p>3 A Right.</p> <p>4 Q So Schuler &amp; Shook also had no</p> <p>5 responsibility for safety on the job site?</p> <p>6 A No.</p> <p>7 Q Are you aware of any OSHA codes or other</p> <p>8 building codes related to the need for a pit</p> <p>9 cover or lift?</p> <p>10 A No, I don't.</p> <p>11 Q Referring to Migan Exhibit 2, the</p> <p>12 transmittal from 1999, you had not seen that</p> <p>13 document before?</p> <p>14 A No, I haven't.</p> <p>15 Q Were you aware of any other early</p> <p>16 submissions by Schuler &amp; Shook that related to a</p> <p>17 pit lift or filler as part of the design</p> <p>18 element?</p> <p>19 A No.</p> <p>20 Q Do you know who Tim McGrath is?</p> <p>21 A Yes, I do.</p> <p>22 Q Who is he?</p> <p>23 A He was the project manager that was on</p> <p>24 the job when it started.</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 Q Is he still at VOA?  2 A No, he is not.  3 Q Do you know when he left?  4 A I think it was about a year after  5 construction. I'm not sure what year though.  6 Q But you and Mr. McGrath were at VOA at  7 the same point in time?  8 A Yes.  9 Q Just different projects?  10 A Yes.  11 Q Did you ever discuss the pit cover with  12 Mr. McGrath?  13 A No, I didn't.  14 Q Do you know who the Talaske Group is?  15 A They are a sound consultant.  16 Q Do you know who Gary Madaras is?  17 A I have heard of his name.  18 Q You don't --  19 A I don't know if he is the project  20 manager or who.  21 Q Referring to Moss Exhibit 9, is it your  22 testimony that Schuler &amp; Shook prepared that  23 document?  24 A Yes.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q Was it Jeff Childs at Schuler &amp; Shook  2 that requested more money for the additional  3 orchestra pit work?  4 A Yes.  5 Q And you said earlier that the school did  6 not tell you why it wanted the pit cover?  7 A No, they didn't specify a reason for  8 it.  9 Q But Schuler &amp; Shook did produce this  10 specification after the request was progressed  11 through VOA --  12 A Yes.  13 Q -- to them?  14 Do you know if there ever was an  15 addendum to the agreement between VOA and  16 Schuler &amp; Shook which related specifically to  17 the pit filler or cover?  18 A I thought there was some sort of  19 proposal that was sent from Schuler &amp; Shook to  20 our office for signature.  21 Q Did you ever see the proposal?  22 A I think I did, but I don't believe I  23 signed it.  24 Q You also said earlier that the cover was</p>
<p style="text-align: right;">Page 139</p> <p>1 Q You said there was part of the heading  2 there that was not in there that VOA would have  3 put in there?  4 A Right.  5 Q Can you clarify that?  6 A Yes. Basically what we had received  7 from Schuler &amp; Shook was the orchestra pit  8 filler, and I believe this may have been done in  9 the District where it says interior buildout  10 consolidated high school district, et cetera, et  11 cetera. I didn't think that we put that on  12 there. That may have been part of what the  13 District did in providing their front end.  14 Q That also includes the three high  15 schools named in bold at the top?  16 A Right.  17 Q Do you know what that JAC is below  18 there?  19 A I don't know.  20 Q You are saying this April 17th  21 specification is not an addendum to the VOA,  22 Schuler &amp; Shook contract?  23 A No, it's not an addendum. I wouldn't  24 consider it an addendum.</p>	<p style="text-align: right;">Page 141</p> <p>1 installed near the end of December?  2 A Yes.  3 Q You were not present for that?  4 A No, I wasn't present for the  5 installation.  6 Q Who at the school district told you that  7 the school would issue the pit filler documents  8 for bids?  9 A Bob Hughes.  10 Q Do you know if Schuler &amp; Shook reviewed  11 any shop drawings?  12 A Yes, I do recall that.  13 Q Do you know if they were passed on to  14 VOA then?  15 A They were after they reviewed them.  16 Q Did you review those shop drawings?  17 A I basically took a quick look at them  18 but they are the -- Schuler &amp; Shook were the  19 ones who had more knowledge on it since this was  20 a specialty item and not VOA.  21 Q Would only Schuler &amp; Shook have stamped  22 the shop drawings for approval or would VOA have  23 done that?  24 A We would have done so also.</p>

36 (Pages 138 to 141)

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<p style="text-align: right;">Page 142</p> <p>1 Q Do you know who stamped the shop 2 drawings? 3 A It probably would have been me. 4 Q Do you know if Schuler &amp; Shook prepared 5 a punch list for the cover after it was 6 installed? 7 A I don't remember. 8 Q But you do think that that was part of 9 their duties to prepare one after it was 10 installed? 11 A Yes. 12 Q Do you know who at VOA would have seen 13 that punch list? 14 A I mean, I think -- if it had been issued 15 towards the end of the summer, it probably would 16 have been me because the other people that were 17 working on the job they already -- I believe 18 already had started working on another project. 19 I kind of became the sole person involved with 20 the three schools since the construction started 21 dwindling down, and we didn't need to have a 22 full-time person working on each school, but it 23 would have been me if there was a punch list. 24 Q When you say you were the sole person</p>	<p style="text-align: right;">Page 144</p> <p>1 inspection that she would have gone through as 2 opposed to you? 3 A That could be possible. 4 Q Let me just ask you about a substantial 5 completion, and I'll give you a hypothetical. 6 If you have a building that needs to 7 be completed and there is several bathrooms but 8 one bathroom on the first floor is not finished, 9 you could block off that portion and still let 10 the owner use the building and issue a 11 certificate of substantial completion? 12 MR. BATTLE: Objection to an incomplete 13 hypothetical. 14 MR. VELAZQUEZ: Join. 15 MR. BATTLE: You can answer. 16 THE WITNESS: Looking at that what you 17 can do -- yes, but what we would do is we would 18 exclude it from the substantial completion list. 19 In other words, I wouldn't put it on there being 20 substantially complete. 21 BY MR. O'CONNOR: 22 Q In other words, you would have to look 23 at the attachment that goes to the substantial 24 completion list to decide whether that area of</p>
<p style="text-align: right;">Page 143</p> <p>1 left from VOA, was there anybody else besides 2 Elaine Fitzgerald who had been there that had 3 left? 4 A They just moved on to another project in 5 our office, but we had a person who was at 6 Andrew High School. His name was John Waters, 7 and at Sandburg there was a John Williamson. 8 Q So it was only Elaine Fitzgerald and 9 yourself at Stagg? 10 A Yes. 11 Q MR. HUTCHINSON: That's all that I have. 12 MR. VELAZQUEZ: Do you have more? 13 MR. O'CONNOR: I just have a few more. 14 E X A M I N A T I O N 15 BY MR. O'CONNOR: 16 Q Elaine described the guy that came from 17 the fire district. She called him Rocko. Do 18 you recall the name Rocko? 19 A I don't know. 20 Q His name was Russell, but they called 21 him Rocko. 22 A I don't remember. 23 Q Is there a chance if he would have came 24 through that he would have done more than one</p>	<p style="text-align: right;">Page 145</p> <p>1 the particular building that you are saying is 2 substantially complete is part of the 3 agreement? 4 MR. BATTLE: Objection. I don't think 5 that's his testimony. I think he said he 6 wouldn't put it on the list if it wasn't 7 completed. 8 MR. VELAZQUEZ: Join. 9 THE WITNESS: I wouldn't put it on the 10 list if it's not complete. I mean, there is an 11 example. The one that we looked at we have room 12 numbers identified of what is completed and 13 what's on the substantial completion. In Area A 14 as an example if I have got two rooms that are 15 incomplete and they have got a lot of work left, 16 I won't put it on there because they can't 17 occupy it. 18 BY MR. O'CONNOR: 19 Q Let me give you a hypothetical. 25 20 percent of the stage area can't be used because 21 there was something that needed to get done in 22 that one portion of it but the rest of the 23 theatre area was completed. Would you be able 24 to issue a certificate of substantial</p>

37 (Pages 142 to 145)

<p>1 completion?</p> <p>2 MR. BATTLE: Objection to the form,</p> <p>3 foundation, incomplete hypothetical, and --</p> <p>4 THE WITNESS: I don't know how to answer</p> <p>5 that question. I mean, I don't know what's not</p> <p>6 complete -- what you are saying is complete and</p> <p>7 what's not complete.</p> <p>8 BY MR. O'CONNOR:</p> <p>9 Q If someone couldn't use the actual stage</p> <p>10 area but could use the rest of the auditorium,</p> <p>11 would you issue a substantial completion?</p> <p>12 A We would exclude anything that would not</p> <p>13 be complete.</p> <p>14 Q So you could issue a substantial</p> <p>15 completion document, but it would exclude the</p> <p>16 area of the stage if the stage was not</p> <p>17 complete?</p> <p>18 A If it was its own area, sure, I guess we</p> <p>19 could do that. We could put an exclusion on</p> <p>20 what wasn't included in that, and the owner</p> <p>21 wouldn't be able to occupy it or use it for its</p> <p>22 intended purpose.</p> <p>23 Q Given that hypothetical, in your</p> <p>24 substantial completion document, where would</p>	<p>Page 146</p> <p>1 some event the following week that was going to</p> <p>2 happen?</p> <p>3 A Yeah, they had asked us to look at --</p> <p>4 everybody try to get this date -- the work done</p> <p>5 and for us to issue the certificate because</p> <p>6 there was some function that they wanted to do</p> <p>7 or something like that.</p> <p>8 Q Would you agree with me that if the</p> <p>9 function didn't involve use of the stage, in</p> <p>10 other words putting on a theatre production,</p> <p>11 that the school district could use the chairs</p> <p>12 and the auditorium and present things without</p> <p>13 using the stage area?</p> <p>14 A Can you repeat that?</p> <p>15 Q Sure.</p> <p>16 Would you agree with me that if the</p> <p>17 school intended to use the function to have a</p> <p>18 gathering place for people to use the seating in</p> <p>19 the theatre area, weren't necessarily going to</p> <p>20 use the stage area for a theatre production but</p> <p>21 were going to do some other kind of awards or</p> <p>22 ceremony, would you agree that that would be a</p> <p>23 use of that building even though they couldn't</p> <p>24 use the stage?</p>
<p>1 that have been placed?</p> <p>2 A Where it says exceptions on the</p> <p>3 following page here. Here are the exceptions</p> <p>4 that we would have listed saying, you know, this</p> <p>5 area is not ready or something like that. If</p> <p>6 it's a room -- if it's its own separate room</p> <p>7 with a room number, which is how the drawings</p> <p>8 really show everything, then we would identify</p> <p>9 that. That room wouldn't just appear on here.</p> <p>10 It wouldn't be put on here. Certain areas, as</p> <p>11 long as they were deemed substantially complete,</p> <p>12 could be used. I mean, we would write an</p> <p>13 exception on what wasn't usable or what was</p> <p>14 usable.</p> <p>15 Q Do you recall that the school district</p> <p>16 on this project said that they wanted to use</p> <p>17 that auditorium for their graduation ceremony?</p> <p>18 A I don't remember that. We obviously</p> <p>19 substantialled the building, and I understand</p> <p>20 that there was an event that followed the</p> <p>21 following week or something like that.</p> <p>22 Q Was it your understanding that the</p> <p>23 reason that you were being asked to issue that</p> <p>24 substantial completion was because there was</p>	<p>Page 147</p> <p>1 A I think they could use the stage.</p> <p>2 Q At the point when you issued this</p> <p>3 substantial completion, do you know whether that</p> <p>4 stage at that point was ready for a theatre</p> <p>5 production to be put on?</p> <p>6 A Well, we got a punch list from Schuler &amp;</p> <p>7 Shook. I mean, they were the people we were</p> <p>8 looking for to tell us yes or no. There was</p> <p>9 nothing on there that they identified to me that</p> <p>10 said, no, you can't use it. To my knowledge,</p> <p>11 you know, everything would be used as</p> <p>12 intended.</p> <p>13 Q So in your opinion at that point the</p> <p>14 stage could have been used for a theatre</p> <p>15 production?</p> <p>16 MR. BATTLE: Objection. He just asked</p> <p>17 and answered that question.</p> <p>18 THE WITNESS: I mean, that's my</p> <p>19 understanding of it, yes.</p> <p>20 BY MR. O'CONNOR:</p> <p>21 Q That would be irrespective of the punch</p> <p>22 list items?</p> <p>23 A Yes, irrespective. The punch list items</p> <p>24 are just items that could be a nick in the wall.</p>

38 (Pages 146 to 149)

<p style="text-align: right;">Page 150</p> <p>1 It could be a broken ceiling tile, but that 2 doesn't stop the owner from using the space. 3       MR. O'CONNOR: That's all that I have. 4       MR. BATTLE: Let me get a couple points 5 of clarity.</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>6 BY MR. BATTLE:</p> <p>7       Q Do you know exactly what's needed to put 8 on a theatre production?</p> <p>9       A No, I don't.</p> <p>10      Q Do you know exactly what's needed from 11 construction workers to complete construction 12 pursuant to VOA drawings?</p> <p>13      A I mean, you are saying like if --</p> <p>14      Q Like if you walked through can you use 15 your VOA drawings and determine if an area is 16 substantially complete pursuant to those 17 drawings?</p> <p>18      A Yes, you could.</p> <p>19      Q And that's the reason why you issue your 20 certificate of substantial completion?</p> <p>21      A Right.</p> <p>22      Q Is that correct?</p> <p>23      A Yes, that's correct.</p>	<p style="text-align: right;">Page 152</p> <p>1 for any testimony or opinions regarding what 2 Jacobs' contractual duties were for District 230 3 for the Stagg High School project? 4       A I would talk to John more so than I 5 would talk to Gerry about that. 6       Q I asked it wrong. 7           With respect to opinions as to what 8 Jacobs' duties were for the District 230 9 project, is that something that you would defer 10 to John Szott or Gerry Myers to set forth in 11 terms of testimony? 12      MR. O'CONNOR: I would object as to it 13 relates to the contract documents. 14      THE WITNESS: I don't really understand 15 it. I really don't understand what you're 16 trying to ask. 17      MR. VELAZQUEZ: Sure. 18 BY MR. VELAZQUEZ: 19      Q With respect to what duties Jacobs had 20 on this project, is that something that you 21 would let John Szott, as somebody involved with 22 contracts, or Gerry Myers, as a superintendent 23 for Jacobs -- is that something that you would 24 let those two explain to everyone else here?</p>
<p style="text-align: right;">Page 151</p> <p>1       Q With respect to the whole honors night 2 issue before your previous deposition, you 3 didn't know anything about it or didn't remember 4 it? 5       A No, I didn't remember. 6       Q Do you remember any other events or 7 anything that the school district may have done 8 in that area after you issued your 9 certificate? 10      A I don't remember. 11      MR. BATTLE: Fair enough. That's all I 12 have. Thanks. 13      MR. VELAZQUEZ: Just a couple more 14 questions, and then that's it.</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>15 BY MR. VELAZQUEZ: 16       Q With respect to John Szott, you referred 17 to him as somebody who was involved with the 18 contract from Jacobs' perspective? 19      A Yes. 20      Q With Gerry Myers, you referred to him as 21 the superintendent for Jacobs? 22      A Yes. 23      Q Would you refer to John Szott or Gerry</p>	<p style="text-align: right;">Page 153</p> <p>1       A Yes, yes. I would say John Szott would 2 have better knowledge of that. 3       Q That would also include the duty or lack 4 thereof regarding safety? 5       A I believe so. 6       MR. VELAZQUEZ: Okay. Thank you. 7       MR. BARAKAT: I just have a couple of 8 questions. 9           E X A M I N A T I O N 10      BY MR. BARAKAT: 11       Q You were not involved in the initial 12 design phase of the Stagg High School project? 13      A No, I wasn't. 14      Q Did you have an opportunity to take a 15 look at those documents? 16      A Not until I hopped on the project. 17      Q Do you have a recollection of those 18 documents as you sit here today? 19      A I looked at them before the previous 20 deposition, but that was like the last time. 21      Q Did you look at them for this 22 deposition? 23      A No, I didn't. 24      Q In general when VOA presents drawings</p>

<p>1 and specifications to an owner, those drawings  2 and specifications are to follow the local codes  3 necessary for that building to be built?  4 A Yes.  5 Q Is that something that VOA does or do  6 they hire consultants to do that?  7 A To do the code review?  8 Q Right.  9 A It varies. Sometimes we do it.  10 Sometimes we do hire a code consultant.  11 Q Do you know if VOA did that on this  12 project or they hired a consultant?  13 A To my knowledge I think there was a code  14 consultant.  15 Q Do you know who that was?  16 A No, I don't.  17 Q That code consultant would then take a  18 look at your drawings and make sure that they  19 were up to code?  20 A Yeah, I think they would give us -- as  21 an example, I mean, there was -- the building  22 types may have differed from the theatre to the  23 school. So, yes, they would review what kind of  24 building and what we're doing with the building</p>	<p>Page 154</p> <p>1 this project, which included the interior  2 buildout such as the stage and the orchestra pit  3 and the seating and all of that, that was all up  4 to code as far as you know?  5 A To my knowledge, yes.  6 Q With regards to, you know, the field  7 observation that you do, you represented -- it  8 was your job to represent the owner with regards  9 to making sure that what was going on  10 construction wise met the specifications that  11 VOA produced?  12 A That's correct.  13 Q And that's in fact what you were doing  14 when you had a field observer at each high  15 school and specifically Elaine Fitzgerald at  16 Stagg?  17 A Yes.  18 Q And you would walk through and make sure  19 that the building was being built according to  20 the documents and specifications that were  21 produced in the design phase?  22 A Yes.  23 Q If they weren't, then you would make  24 sure that that was corrected?</p>
<p>1 and they would give us the recommendations, I  2 guess, like on fire ratings and things of that  3 nature.  4 Q Before you handed those documents over  5 to the owner, you would make sure that they  6 were -- the drawings and specifications met  7 those codes?  8 A Yes.  9 Q And the design of a performing arts  10 theatre is a very specialized kind of  11 building?  12 A Right.  13 Q And the interior specifically is even  14 more specialized?  15 A Yes.  16 Q And that's not something -- that's  17 something that VOA would hire consultants to  18 take a look at?  19 A Yes, we would.  20 Q In this case you hired Schuler &amp; Shook  21 to do that for you?  22 A Yes.  23 Q After consulting with Schuler &amp; Shook,  24 the documents that you presented to the owner on</p>	<p>Page 155</p> <p>1 A Yes.  2 Can I just clarify that? What we  3 would do is we would notify Jacobs. We wouldn't  4 go out and physically correct it.  5 Q That's not what I meant. You would make  6 sure that they would get corrected by the proper  7 entity?  8 A Correct. We would send a letter or an  9 E-mail or something saying that this doesn't  10 comply, and Jacobs then would be responsible to  11 contact the contractor, whoever it was, to  12 correct the work.  13 Q Now, I know you didn't review any of the  14 contract documents for this particular job.  15 People started talking about contract documents.  16 Just so we're all clear, you indicated earlier  17 that an addendum to the contract is something  18 that occurs prior to construction?  19 A That's typically --  20 Q Just so we all get our terminology  21 correct.  22 A Yes.  23 Q So if there is a contract, before it  24 gets executed and there is a change, that would</p>

40 (Pages 154 to 157)

TEAMSTERS' LOCAL UNION 705 and TEAMSTERS' LOCAL UNION 710

DISPUTE

<p>1 be an addendum?</p> <p>2 A Yes.</p> <p>3 Q After the contract is already being</p> <p>4 executed, construction is going on, and say</p> <p>5 there is a change order, something like that.</p> <p>6 What would the term that you would understand to</p> <p>7 be for that sort of thing?</p> <p>8 A It would be -- well, we would issue like</p> <p>9 an RFP, a request for a proposal. That would</p> <p>10 get sent to Jacobs, and they would distribute it</p> <p>11 to whoever the change effected. They would get,</p> <p>12 you know, a quote back from a contractor and</p> <p>13 they would then issue a change order saying --</p> <p>14 they would issue the RFP back to us. We would</p> <p>15 look at it for the pricing, content, and</p> <p>16 whatnot. If there was any disagreements or any</p> <p>17 questions that we had, we would talk to them.</p> <p>18 Once everything was okay between what we looked</p> <p>19 at and what Jacobs looked at, then a formal</p> <p>20 change order was issued to the contractor, and</p> <p>21 that was just to get that contractor paid.</p> <p>22 MR. VELAZQUEZ: Dean, was that last</p> <p>23 question directed to changes in general or the</p> <p>24 actual pit cover?</p>	<p>Page 158</p> <p>1 A Yes.</p> <p>2 Q And you went to the owner and indicated</p> <p>3 that?</p> <p>4 A (Nonverbal response.)</p> <p>5 Q And they okayed it?</p> <p>6 A Yes.</p> <p>7 Q And that's indicated in those E-mails</p> <p>8 that we've already discussed?</p> <p>9 A Right.</p> <p>10 Q And that's how that process came</p> <p>11 about?</p> <p>12 A That's correct.</p> <p>13 Q And that's how that specification was</p> <p>14 produced?</p> <p>15 A Right.</p> <p style="text-align: center;">EXAMINATION</p> <p>16 BY MS. ELRABADI:</p> <p>17 Q Al, you testified that to your knowledge</p> <p>18 pit filler's main purpose is to expand the stage</p> <p>19 floor?</p> <p>20 A Yes.</p> <p>21 Q Did you learn that from someone on the</p> <p>22 project?</p> <p>23 A Well, Jeff was kind of the one that I</p>
<p>1 MR. BARAKAT: No, in general. So far</p> <p>2 I'm talking about in general, not even with</p> <p>3 regards to this particular project.</p> <p>4 BY MR. BARAKAT:</p> <p>5 Q Specifically when we are talking</p> <p>6 specifically about the specifications for the</p> <p>7 pit filler that was done, Schuler &amp; Shook were</p> <p>8 VOA's consultants?</p> <p>9 A Yes.</p> <p>10 Q So you didn't need to issue an RFP or do</p> <p>11 any of that other stuff because they were VOA's</p> <p>12 consultant?</p> <p>13 A That's correct.</p> <p>14 Q So any of that -- any dealings between</p> <p>15 Schuler &amp; Shook would have been internal between</p> <p>16 VOA and Schuler &amp; Shook?</p> <p>17 A That's correct.</p> <p>18 Q When you start talking about the owner</p> <p>19 asked for a pit filler and then Schuler &amp; Shook</p> <p>20 told you that they -- Jeff Childs apparently</p> <p>21 told you that that was something outside of the</p> <p>22 scope of your contract between VOA and Schuler &amp;</p> <p>23 Shook and that there was additional money that</p> <p>24 needed to be paid to pursue that project?</p>	<p>Page 159</p> <p>1 talked to. That's kind of the reason he gave</p> <p>2 me.</p> <p>3 Q So your consultant, who is a theatre</p> <p>4 expert, told you that pit filler's main purpose</p> <p>5 is to expand stage floors to expand the usage of</p> <p>6 that floor; is that correct?</p> <p>7 A Right, that's correct.</p> <p>8 Q And the school district was concerned</p> <p>9 about getting a pit filler that can ultimately</p> <p>10 be installed and uninstalled by someone -- by</p> <p>11 their maintenance personnel, is that true?</p> <p>12 A Yes.</p> <p>13 Q So is it fair to say that as early as</p> <p>14 these E-mails in April of 2002 you told Jeff</p> <p>15 that the school district was concerned that -- I</p> <p>16 will quote this. This should be acceptable for</p> <p>17 a few staff members to remove and reinstall.</p> <p>18 Are you telling Jeff Childs at Schuler &amp; Shook</p> <p>19 that the school district was concerned about</p> <p>20 getting pit fillers that can be easily installed</p> <p>21 and reinstalled by District 230 staff and</p> <p>22 maintenance personnel?</p> <p>23 A I don't know who was going to do it, but</p> <p>24 ultimately it would be either the staff or maybe</p>

41 (Pages 158 to 161)

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<p style="text-align: right;">Page 162</p> <p>1 students that, you know, would be involved in 2 any type of performance to remove these things. 3 So that was a concern of the Districts that they 4 didn't weigh too much. 5 Q You're not exactly sure who the staff 6 members would be? 7 A This refers to the District's staff 8 members. 9 Q So is it possible that as early as April 10 of 2002 maintenance personnel were aware of the 11 presence of an orchestra pit? 12 A That, I don't know. I know that the 13 District was aware of what they were asking us 14 to do. 15 Q And you said that the pit fillers that 16 were actually installed were -- you called them 17 a Ugo version? 18 A Yes. 19 Q Do you know if it was -- what actually 20 was involved in installation? 21 A You mean to actually install them? 22 Q Yes. 23 A From what I recall, the trim that was on 24 the front of the stage and around the area had</p>	<p style="text-align: right;">Page 164</p> <p>1 Bob Hughes that Mr. Madden fell in August of 2 2002? 3 A Yes. It was through the District that I 4 heard about it. 5 Q Do you recall any other details about 6 what he told you about how the accident might 7 have occurred? 8 A He mentioned something about the 9 individual had backed into it, that there was 10 some performance going on or they were getting 11 ready for a performance and he backed into it. 12 That was what I recall Bob telling me. 13 Q Do you know at that time if there were 14 actually barricades installed? 15 A He mentioned something that there were 16 barricades there but they were moved either for 17 the stage installation or something for the set 18 installation. If they were moved by him or by 19 somebody, I don't know. He did mention that 20 there were barricades there and the person 21 backed into it. 22 Q So you didn't here that he walked head 23 on into the pit? 24 A No, that's not the story that I heard.</p>
<p style="text-align: right;">Page 163</p> <p>1 to be modified a little bit for them to be 2 placed flush with the stage floor. 3 Q So there could be a number of pieces 4 that make up the entire pit cover? 5 A Oh, yes, because it would be too heavy, 6 and I don't think anybody will be able to remove 7 it. 8 Q So there could have been as many as 9 10? 10 A As many as 10 or 20, yes. 11 Q But you don't know exactly how many? 12 A I don't know exactly how many. 13 Q Each one needed to be installed and 14 taken out individually? 15 A Right. I guess -- my understanding is 16 there is an order. You start out on one end and 17 each piece is bigger. So there is a consecutive 18 order to how to put these things in. 19 Q Do you know if there was ever any 20 discussion with the school district and, for 21 instance, maintenance personnel about how to 22 install these exact pit fillers? 23 A No, I don't know. 24 Q You also testified that you heard from</p>	<p style="text-align: right;">Page 165</p> <p>1 Q The document that was recently produced 2 by Mr. Hutchinson related to pit filler options. 3 I'm not sure which exhibit that is. 4 MR. O'CONNOR: 2. 5 BY MS. ELRABADI: 6 Q It's dated August 4, 1999. So is it 7 fair to say that the school district had an 8 option as early as '99 to install them -- 9 MR. BARAKAT: I'm going to object to 10 this. This document, Migan Exhibit 2, is a 11 Schuler &amp; Shook document that is to Tim McGrath 12 of VOA. There has been no evidence that this 13 was ever presented to the school or the school 14 had any options. This particular witness has 15 testified that he hasn't seen this document 16 before today, and I am going to object to 17 foundation and speculation. 18 If you know if the District had the 19 option of having pit fillers installed in August 20 of '99, you may answer. 21 THE WITNESS: No, I don't know that. 22 BY MS. ELRABADI: 23 Q My final question relates to Exhibit 24 Moss No. 9 in the Section Part 3, Execution,</p>

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<p>Page 166</p> <p>1 Section 3.2 in the installation section. Part A 2 says contractor shall employ only experienced 3 platform system installers for the installation 4 of this section. A competent supervisor shall 5 be maintained on this project during the entire 6 installation.</p> <p>7 Did you take that to mean anyone on 8 the current budget?</p> <p>9 A No, that would have been the contractor 10 that installs the pit fillers.</p> <p>11 MS. ELRABADI: Thank you.</p> <p>12 MR. BARAKAT: I've got two follow-ups.</p> <p>13 E X A M I N A T I O N</p> <p>14 BY MR. BARAKAT:</p> <p>15 Q Regarding the use of the terms addendum 16 and change order, were you aware of an addendum 17 to the agreement between VOA and Schuler &amp; Shook 18 related to the investigation of the pit 19 filler?</p> <p>20 A No, I wasn't.</p> <p>21 Q And was there ever a formal change order 22 issued regarding getting a pit filler cover in 23 2002?</p> <p>24 A Not that I recall, no. I don't know.</p>	<p>Page 168</p> <p>1 STATE OF ILLINOIS 2 ) SS. 3 COUNTY OF COOK ) 4 5 6 I, SHERRY L. JONES, a 7 Certified Shorthand Reporter for the State of 8 Illinois, do hereby certify that the foregoing 9 was reported by stenographic and mechanical 10 means, which matter was held on the date, and at 11 the time and place set out on the title page 12 hereof and that the foregoing constitutes a true 13 and accurate transcript of same.</p> <p>14 I further certify that I am not 15 related to any of the parties, nor am I an 16 employee of or related to any of the attorneys 17 representing the parties, and I have no 18 financial interest in the outcome of this 19 matter.</p> <p>20 21 22 23 C.S.R. No. 084-004024 24</p>
<p>Page 167</p> <p>1 MR. BARAKAT: That's it. 2 MR. O'CONNOR: Signature? 3 MS. ELRABADI: We'll waive signature. 4 (AND FURTHER DEPONENT SAITH NOT.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	

43 (Pages 166 to 168)

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